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International Court of Justice

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Official Transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviel Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 8 July 1946, 1000-1700. Lord Justice Lawrence presiding.

THE MARSHALL : May it please the Tribunal, Defendant Fritsche is reported absent.

DR. HORN : Dr. Horn, on behalf of the former Foreign Minister von Ribbentrop.

With the permission of the High Tribunal I shall continue with my final presentation beginning with Page 35. The English text page number corresponds with the German text page number.

Previous to the attempt of settling in a general way the concept of aggression and the sanctions against the aggressor, political alliances determined the obligations of the parties to wage war. In order to improve this unsatisfactory, anarchic situation, the United States, under Secretary of State Bryan, took the initiative, in a series of separate treaties, to agree upon delays of respite, which were meant to postpone an outbreak of hostilities, and to allow the passions to cool down.

The statutes of the League of Nations took up this point of view, but went one decisive step further by determining a procedure for establishing by League organs the permissibility or non-permissibility of war. The decision purported whether the war was permitted or not by the statute. The aim of this settled procedure was to hit the disturber of international order, who was not necessarily identical with the aggressor. The state which went to war in accordance with the resolutions of the League of Nations organs behaved in a lawful way, even when undertaking preliminary hostilities, amounting to an aggression in the military sense.

It was therefore apparent that the discrimination between aggressor and attacked was not sufficient to secure an equitable settlement of international relations.

Although these statutory definitions and the proceedings based thereon pointed out that the antinomies lawful - unlawful, permitted - prohibited, aggressor - attacked did not apply, it was still being tried to brand the

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transgressor of international order through the concept of the aggressor. As the material decision failed owing to the difficulties just mentioned, it was tried to make out of the indeterminable juridical concept a political decision of the League of Nations organs qualified for maintaining international order. Such was the case in the draft of a mutual assistance agreement elaborated in the year 1923 by order of the League of Nations assembly. The Geneva protocol, which was meant to supplement the statute inadequacies concerning the question of conflict settlement, also transferred to the League of Nations council the decision of determining who had violated the agreement and was, therefore the aggressor.

All other attempts of outlawing war and settling conflicts mentioned by the British chief prosecutor have remained drafts, excepting the Kellogg Pact.

It can probably put down to this fact that the idea of a juridical definition of the aggressor was once more taken up at the disarmament conference. In this way the definition was established in the year 1933 by the committee for security questions, guided by the Greek Politis, of the general disarmament conference committee.

Owing to the failure of this conference, the definition was made the object, in the same year, of a series of separate treaties, at the London conference. The only great power participating was the Soviet Union, which had taken the initiative of the definition at the disarmament conference. This definition has also been adopted by the United States chief prosecutor, who has based thereon the indictment for a crime against peace, before this Tribunal. This definition is no more than a proposal of the prosecution within the limits of the statute, which does not circumscribe the concept of a war aggression. It must be emphasized that Mr. Justice Jackson cannot invoke in this matter any universally acknowledged principle of international law.

The report of the 1933 commission did not become the object of a general treaty, as projected, but was merely agreed upon between a number of individual parties in agreements binding only for the concerned. As a matter of fact the only agreements were those between the Soviet Union and a number of states around it. No other great power accepted the definition. In particular, Great Britain kept aloof, notwithstanding the fact that the separate agreements mentioned were actually signed in London. At least the participation of the great powers would have been required for the constitution of an

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international law principle of such far-reaching importance for the reorganization of international relations.

Besides this juridical way of treatment the utterances of British and American chief prosecutionshow that also as far as facts are concerned the proposition does not give much satisfaction. In the important question of point 4 of the definition, the British differs from the American. The old conflict of interests between mare liberum and mare clausum has led the prosecution to Sir Hartley Shawcross not mentioning the naval blockade of the coasts and ports of a state as aggressive action.

The definition of 1933 may offer valuable characteristics for establishing the aggressor, but one does not get around the fact that a formal juridical definition shows the impossibility of doing justice to all actual political cases.

At the experiment to set down a new regulation for creating order in the world in the Charter of the United Nations one returned, evidently having recognized this truth, to the idea of a decision by an international institution, without wanting to squeeze its judgment in to the bed of Procrustes of a rigid definition. The Charter of Peace of San Francisco says, in chapter VII Art. 39:

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

In the year 1939 there was neither a recognized definition of the aggressor nor an institution authorized to designate the aggressor.

The League of Nations as an institution for the settlement of conflicts had completely failed. This was expressed outwardly already by the part that three great powers had left it. How little the League of Nations-Torso was taken notice of in international life, was shown by the attitude of the Soviet Union in the Finnish question. It did not take into consideration in any way

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the decision of the League of Nations but followed in its dealings with Finland its own interests.

If now, after these statements, I make a proposal to the court of what should be understood by the word "attack" in Article 6a of the Charter, this qualification cannot link up with a definition recognized in international law. We therefore must start off from the suppositions which the practices of states and the traditions of diplomacy are wont to connect with it.

According to the conception existing in the year 1939, the outbreak of war, in whatever way it happened, was not valuated juridically.

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The Kellogg-Pact and the negotiations following it have not been able to abolish this fact which was the result of a development of centuries. This is to be deeply regretted but one cannot go past reality. That this opinion is in accordance with the conception of international law of the main participating powers that had signed the statute when war broke out follows from the fact that men of international reputation in the field of international law were of the opinion that, should the Kellogg-Pact and the system of collective security fail, the traditional legal conception as to war was still valid.

Was Herr von Ribbentrop obliged to have the opinion in 1939 that his acts, measured by the tradition of diplomatic technique, would be valuated as crimes punishable by international law?

I have already pointed out that generally, and therefore also by Herr von Ribbentrop, the then existing frontier line in the East was considered not to be tenable in the long run and was, therefore, considered to be needing some adjustment.

The Peace Conference at Versailles created problems by satisfying the Polish demands when this state was newly created, problems which could not be solved by international cooperation in the time during the two world wars.

These frontiers could never be guaranteed inside a system of European pacts. In the Locarno treaties a guarantee for the Eastern frontier created by Versailles could not be reached because of the opposing interests of the participating powers, whereas for the Western frontiers it was arrived at. All that was achieved after endless efforts were arbitration treaties, connected to the Locarno system, between Germany and Poland and Germany and Czechoslovakia. They did not contain any guarantees for frontiers but only methods for settling litigations. I shall deal with them when I come to the various violations of treaties which Herr von Ribbentrop is blamed for.

After Hitler had also expressed his distrust towards collective security by leaving the Disarmament Conference and the League of Nations, he went over to the system of bilateral treaties. At the preparatory negotiations to the agreements between Poland and Germany of 1934 it was clearly stated, that between the two states a solution of the problems should be found in the sprit of the treaty. We will not suppress here that for this settlement but peaceful means were considered and a 10-year non-aggression pact was concluded. Whether

Hitler believed honestly in the possibility of solving this problem or hoped to change the untenable situation in the East by means of evolution is of no importance for the forming of an opinion on Herr von Ribbentrop's behaviour. He did not take any initiative in this step, but found this agreement as an existing political and juridical fact.

The experience of settling international interests teaches that agreements are durable only when they correspond to political realities. If that is not the case, the force of facts oversteps of itself the original intention of the contracting parties.

A great statesman of the 19th century has expressed this truth by saying: "The element of political interest is an indispensable lining of written treaties."

Thus, the Eastern question was not removed by the agreement of 1934, but continued to burden international relations. As shown by the evidence, it became more and more clear in the course of political evolution that sooner or later solutions of some kind had to be attempted. Both the statute of the Fre

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City of Danzig, which was in contradiction with ethnological, cultural and economical facts, and the isolation of Eastern Prussia through the creation of a corridor, had brought about causes for conflict, which a number of statesmen feared as far back as Versailles.

Taking into consideration such a state of things, the English guarantee declaration to Poland of March 21, 1939, enlarged on August 25, 1939 into the mutual aid agreement, was susceptible, in case of the appearance of a possibili of conflict with this country, of making the Poles averse, from the first, to a sensible revision, even within a moderate frame.

This guarantee declaration shows once more how much Great Britain drew conclusions, taking a sensible political view, out of the decline of the collective security system, and how small a confidence it had in the practical results of the moral condemnation of war through the Kellog-Pact.

Mr. von Ribbentrop, had, therefore, to draw the conclusion out of the behaviour of Great Britain, that the attitude of the Polish Government, from which Germany was entitled to expect some concession, was bound to become rigidly inflexible. The development during the following months proved this provision to be right.

The stepping-in of the Soviet Union into the conflict demonstrates in particular that the coming danger would take place within the compass of the usual principles of politics and the carrying through of the interests of one's own country. The Soviet Union, too, had on her side, left the ground of collective security system. She looked at the approaching conflict from the viewpoint of Russian interests exclusively. As things were, Mr. v Ribbentrop took pains to at least localize the threatening conflict, if it could not be avoided. He could rightly hope to succeed in this endeavour, as both powers primarily interested in Eastern Europe, the Soviet Union and Germany, concluded the non-aggression and friendship agreement previous to the outbreak of armed hostilities. At the same time, they came to terms, by way of a secret agreement, concerning the future fate of the territory of Poland and the Baltic countries.

Nevertheless, the machinery of the assistance agreements was released, and thereby the local Eastern European conflict became a world conflagration.

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If one wants to apply a juridical standard to these facts, one cannot do so without taki g into consideration the Soviet Union from the point of view of participation.

The conflict in Eastern Europe grew, through the participation of Great Britain and France, into a European one, necessarily followed by the universal conflict. The entry in the war of the powers mentioned took place according to the forms provided by the 3rd Hague Concention concerning opening of hostilities, i.e. an ultimatum with conditional declaration of war.

At the session of March 19th, 1946, Mr. Justice Jackson, interpreting the Indictment, has stressed the point that the extension of the war brought about by the Western powers, did not constitude a punishable aggression on the side of Germany. This interpretation is in keeping with his general argumentation concerning the notion of aggression. Should he want to carry this through quite consistently, he would logically have to declare Great Britain and France aggressors of Germany for having brought about the state of war by means of the ultimatum.

I believe I am sharing the prosecution's viewpoint when I give voice to the supposition that such a result would not meet with the prosecution's approval. The prosecution has brought forward its evidence in such a way as to enter into the politically historical background of the war. It has accordingly not been satisfied with relying on the formal juridical definition or any single criteria thereof.

It accordingly confirms my conclusion presented by me to the Court, that the definition proposed by the prosecution is no suitable base for the qualification of the indeterminable concept of aggression.

May I be allowed to summarize the events at the outbreak of the war:

Kellog Pact and aggression concept --- the prosecution's pillars do not support it. The Kellog Pact had no juridically expressible contents, neither for the countries not, and even much less, for an individual. The attempt to put life into it afterwards, by means of a formal concept of aggression, was frustrated by political reality.

Mr. von Ribbentrop's share in the extention of the conflict to Scandinavia was so small that it hardly can be put to his charge as a separate action.

The interrogations of the witnesses, Great Admiral Radder and Field Marshal Keitel, have shown beyond doubt that, as a matter of fact,

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Mr. von Ribbentrop was informed of this operation for the first time only 36 hours in advance. His contribution was solely the elaboration of notes prescribed to him in contents and form.

Concerning the actual side, viz. the imminent violation of Scandinavian neutrality by the Western powers, he had to be content with the informations communicated to him. The evidence has shown, and I shall expose later on in juridical arguments, that he was, as Minister for Foreign Affairs, not competen to check those informations, and that he did not possess any actual means to do so. Presuming that these informations were true, he could justly assume that the German Reich behaved, in the intended action, quite according to internatic law. I leave more detailed argumentation concerning this point of law to my colleague, Dr. Siemers, well conversant with this point, whose client, Great Admiral Raeder, had submitted to Hitler a large part of enemy information and the proposal for a German occupation of Scandinavia.

In the case of Belgium, and the Netherlands it has been proven by evidence that an unrestrained maintenance of the neutrality of the Belgian-Dutch territory by these countries could not be guaranteed. Previous to the war, there already existed between the general staffs of the Western powers and thos of both neutral countries agreements and current exchanges of experiences concerning behaviour and occupation in case of a conflict with Germany. Detailed deployment plans and fortification systems built under supervision of detached officers of the Western powers were meant to prepare the reception of allied forces. These projects comprehended not only a cooperation of the armies concerned, but also the assistance of certain civilian authorities, for the purpose of carrying out supplying and advance of the Allies.

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Important about these preparations is the fact that they were made not only for the case of defense, but also for the offensive. For this reason Belgium and the Netherlands also could not or would not prevent it that British bomber formations continued to fly over them, whose near aim was the destruction of the Ruhr-district, the heel of Achilles of the German war industry. This area was also the main goal of the Allies in case of an offensive on land.

These intentions as well as the most intensive preparations for offensive measures by the Western Powers had been ascertained beyond a doubt by sources of information. The grouping of the offensive forces showed that the Belgian-Netherland territory was included in the theater of operations. As has already been described in connection with preceding cases of conflic such information was currently passed on to Herr von Ribbentrop by Hitler or his deputies. Here too Herr von Ribbentrop had to rely upon the accuracy of these informations without having the right and the duty of checking on them. In that way he, too, became convinced that in order to avert a deathly danger, namely an Allied thrust into the Ruhr-district, preventive counter-measures were necessary. On the basis of these considerations Luxembourg simply could not be spared because of the extensiveness of modern military operations.

In connection with this procedure the prosectuion accuses, among others the German Foreign Policy and thereby Herr von Ribbentrop, to have made plans to march in, in contradiction to the 5th Hague Convention concerning the rights and duties of neutral powers, and persons in case of war on land.

In this connection it was overlooked by the Prosecution that this convention does not have reference to drawing a neutral into a war between other powers, but deals only with the rights and duties of neutrals and belligerents as long as the neutrality status exists.

The Prosecution has made the mistake to apply its erroneous interpretation of the Kellog-Pact, as I have shown, to the pact which had been made 20 years earlier. There remains no doubt that, at the time of the 2nd Hague peace conference, the law did not evaluate the outbreak of war as a legal but only as a historical fact.

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All conventions concerning laws of war, especially the Rules of Land Warfare and the Neutrality Pact for Land and Sea-Warfare, are built upon the basis of an existing state of war, hence do not regulate the jus ad bellum, but the jus in bello.

This fact disposes of the Prosecution's references to the 5th Conv tion of the Hague in all cases of the spreading of the war to the neutral which have ratified this convention.

It is moreover, quite doubtful whether the Locarno-Treaty can be mentioned, as it was done by the Prosecution, in connection with drawing Belgium into the war. With Germany's renunciation in 1935 the Locarno system had collapsed, as will be shown by the defense-counsel of Mr. von Neurath. All attempts to effect a new union which was to take its place were guided by the fact, that the actual situation created by Germany must be taken as the starting point for a new agreement. This may be see especially from the British and French plans for the intended new agreeme The attempt to create a new agreement was not successful. However, the thorough and long drawn out negotiations show very distinctly, that none of the signatories considered the treaties of Locarno valid any longer. On the contrary, the Western Powers proceeded to consider among themselves the effects which their obligations of guaranteeing the Western borders still held after Germany's withdrawal.

Regardless of howone may judge Germany's attitude of 1935, it remai to be stated that with it the pact system had lost its validity. Hence in 1940 German commitments to the Western Pact of 1925 did no longer exis

I shall, on a later occasion, discuss the arbitration conventions with Belgium, Poland and Czecheslovakia in connection with the Locarno-Treaty, when discussing in general Germany's obligation for a peaceful settlement of disputes.

As far as Luxembourg is concerned, not even the Prosecution referre to the neutralisation of this country. Evidently it went on the assumption that Germany had been forced by the Treaty of Versailles to give up its rights given to her by the London agreement of 1867.

When, on 24 March 1941, the Yugoslav Government joined the Tripart te Pact, Herr von Ribbentrop could not in the light of the available news assume that a few days after the joining, a military intervention by

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Germany on the Balkans would be necessary for political reasons. This situation was caused by the forcible change of government in Belgrade. The reaction to the joining of the Tripartite Pact by the government Stojadinowitsch resulted in a new political change in Yugoslavia under the leadership of Simovitch, which aimed at a close cooperation with the Western Powers counter to the idea of the Tripartite Pact.

In view of this uncertain situation in the interior of Yugoslavia which because of the mobilisation of the Yugoslav army and their deployment on the German frontier became a danger for the Reich, Hitler suddenly decided on military operations on the Balkans. He made this decision without the knowledge of Herr von Ribbentrop, with the idea in mind to eliminate an imminent grave danger for the Italian ally.

The testimony of the witness Col. General Jodl has shown beyond a doubt that Herr von Ribbentrop after Hitler's decision and after the Simovitch Putsch, seriously endeavoured to be allowed to exhaust all diplomatic possibilities prior to the beginning of military operations. Colonel-General Jodl has confirmed there that Herr von Ribbentrop's endeavours were rejected in so rude a manner that, taking into consideration Hitler's nature and the prevailing methods, any influence on Hitler was practically out of the question.

The fact that since March 4th 1941, strong British forces were pushing to the North from southern Greece, made a further localization of the Italo-Greek conflict impossible, This war begun in the autumn of 1940 against German wishes, but Hitler could, with a view to the general situation, certainly not tolerate the imminent defeat of his Italian ally.

When Herr von Ribbentrop on August 23rd 1939, signed at Moscow, the ties between Germany and the Soviet Union, including a secret agreement concerning the Division of Poland and the surrender to Russia of the Baltic states, the ideological discussion in part, of an extraordinarily vehement nature, between National Socialism and Bolshevism, were, for the time being eliminated from the international sphere, where they formed elements of possible danger. This system of treaties, to be supplemented in the course of the next month, had a favourable influence on the opinion concerning Hitler's foreign policy of large circles of the German people, which were alarmed by the ideological contrasts.

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Since the Reinsurance Treaty signed by Bismarck with Russia there wa, a general conviction in Germany that the maintenance of friendly relations with Russia must always be the goal of our foreign policy.

For the just mentioned traditional reasons Herr von Ribbentrop considered these pacts a strong pillar of the German Foreign policy. Because of this opinion he invited in Winter 1940 the Foreign Commissar of the Soviet Union, Molotov, to Berlin to clear up problems which had arisen in the meantime. Unfortunately this conference did not bring the desired results.

Hitler became very much alarmed by this conference and by secret information, as about the future attitude of the Soviet Union towards Germany. Especially the attitude of Russia in the Baltic countries as well as the Soviet march into Bessarabia and into the Bukowina were considered by Hitler as actions which were apt to endanger the German interests in the Baltic provinces and in the Rumanian iol district. He furthermore saw in the attitude of the USSR the possibility of taking influence on Bulgaria. He co ld consider the Friendship Pact with Yugoslavia on 5 April 1941 as a confirmation of his suspicion, as it occurred at a time when Yugoslavia after a change of government, threatened to turn to the Western Powers.

In spite of these misgivings of Hitler of which he frequently informed Herr von Ribbentrop, the defendant tried to avoid the tensions. The Tribunal has permitted me to submit an affidavit which confirms that Herr von Ribbentrop still tried in December 1940, in an extensive discussion, to induce Hitler to give him once more authority for the inclusion of Ru in the Tripartite Pact. This documentary evidence confirms that Herr von Ribbentrop after his conference, could have been of the opinion that he would succeed in this step through the consent of Hitler. Subsequently Hitler however, returned again and again to his misgivings which were str thened by the news of hiw own secret service about military operations on the other side of the Eastern border. In spring 1941 Herr von Ribbentrop tried to bring to Hitler in Berchtesgaden, the then Ambassador in Moscow and one of his subordinates. Both diplomats were not admitted. This ende the regime. He afterwards also believed that he could no longer shut his eyes to the information which was brought to his knowledge.

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As Col. Gen. Jodl had testified, he and all the Commanders in Chief who took part in the beginning of the Russian campaign, were convinced that they had pushed right into the midst of an offensive concentration of troops This is proven by, among other things, maps which were found and which cover the territory on this side of the German Russian line of interests.

Can one really

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believe that this conduct of the Soviet Union is in agreement with the Non Aggression Pact?

Around that time the danger of a spreading of the European war into a world war began to stand out more and more threateningly. The United States proclaimed a neutrality law at the beginning of the war, in which they submitted in advance to fixed rules in case of a future war. The mechanism of the neutrality law was set in motion by a proclamation of the President. It designated at the same time the danger zone within which American ships could not count upon the protection of their government.

This attitude at the beginning of the war confirms that the United States, the author of the Kellogg-Pact, were not of the opinion that the traditional law of neutrality had in any way been modified by it.

The United States, however, deviated during the course of the spreading and the aggravation of the European war more and more from the original line, without the German Reich furnishing any cause for conflict with U.S.A.

According to the experiences of the first world war German general opinion and consequently that of Herr von Ribbentrop was for a prevention by all means of an intervention on the part of the U. S. A. Since the quarantine speech of President Roosevelt in 1937 strong contrasts could be noticed more and more in the ideological-political train of thoughts of the world's public opinion. The situation was aggravated by the incidents of November 1938 in Germany, which were the reason for the recall of the Berlin Ambassador to Washington for reporting, from where he did not return to his post.

If, in spite of that, the neutrality policy was further prepared by legislative actions and became effective at the beginning of the war, the German Foreign Office and Herr von Ribbentrop could conclude that the existing differences of opinion as to the internal political form of the state would not change the neutral attitude of the United States. Because

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of this expectation, not only everything that could produce unfavorable effect in the United was avoided since the outbreak of the war, but we also acquiesced to quite a number of actions by the United States which were weakening Germany and were not in accordance with strict neutrality.

The world public was informed of the accordance of the political aims of the neutral America and the belligerent Great Britain, when the leading men of the two states proclaimed in August 1941 the Atlantic Charter as the program of the new order of the relationships between the nations. It had an obviously hostile character against the Axis Powers and left them no doubt that the United States had sided with the other side.

There followed the incidents on the high seas which, as the evidence has shown, can be credited to the account of the material support of Great Britain by the United States.

In occupying Iceland and Greeland in summer and fall 1941 the U.S.A. took over the protection of the most important line of communication of the then severely struggling British Empire. This was a military intervention even before the outbreak o the officially declared war. The socalled shooting order of the President brought about a dangerous situation which could result any day in the outbreak of the armed conflict. Several months before the 11 December 1941, the United States took measures which formerly were taken only during a war. The outbreak of the war was only a link in a chain of successive incidents, perhaps not even the most important. It was caused by the Japanese attack on Pearl Harbor, which, as the evidence has shown, was neither instigated nor could have been foreseen by Germany.

According to the formal definition of the aggression the declaration of war is one of the criteria for the determination of the aggressor. As I have already pointed out in connection with the spreading of the war in Europe this criterion alone without the factual background is no positive proof for an act of aggression. As reaction to the numerous neutrality violations

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by the Unites States, which represented actions of war, the German Reich would have been justified for a long time to reply on her part with military actions. Whether this right was exercised after a preceding announcement -- that is a declaration of war -- or not is immaterial. So far, I have thrown some light upon aggressive acts as enunciated by the Prosecution, from the beginning of the Polish Campaign to the entry into the war of the United States. It remains to take up a juridical position regarding the treaties concluded by Germany, which provided for a pacific settlement of political conflicts.

Herr von Ribbentrop is charged not only with having been a party to aggressive acts, but also with his omission to release the mechanism of aforesaid treaties previous to armed conflict. From the fact that the ways for pacific settlement as provided by the treaties had not been used, the Prosecution draws the conclusion that these omissions can be attributed, in a criminal sense, to Herr von Ribbentrop. This interpretation however would be erroneous in a legal sense.

If we begin ny sharing the Prosecution's point of view, we shall see that even in this case the conclusions drawn by the Prosecution cannot be upheld. Even if a single minister could be made legally responsible for the non-operating of a set of treaties,

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the Prosecution cannot but ask whether the minister was actually in a position to ensure a result of any legal consequence. According to a principle embodied by nature into any system of criminal law on earth, a defendant is punishable for an omission only if he had actually been in a position and legally liable to act. I shall demonstrate at length, within the compass of my arguments concerning the conspiracy, how small, in fact, Herr von Ribbentrop's possibilities of influence have been. The decisive point at issue is the fact that he was not legally in a position to make any declarations to foreign powers binding the German Reich, other than those he was empowered to do by the head of the state. As head of the state, Hitler was the representative of the German Reich from the point of view of international law. He only was in a position to make binding declarations to foreign powers. Any other persons could legally bind the German state only if authorized by the head of the state, unless the treaty in question explicitly provided otherwise.

It is not a characteristic of the German Fuehrer state only that the foreign minister cannot independently enter into binding commitments towards foreign powers. It is rather a general principle of international relations that only the organ empowered to represent the state is apt to act for it. The difference between German conditions and those of democratic constitutions merely lies in the fact that in the former the foreign minister usually has a larger internal influence on the intentions of the head of the state. The defendant, therefore, could not have obtained any legal result if he had tried, against the Fuehrer's wish, to have recourse to the possibilities of settlement of conflicts as provided by the numerous treaties of arbitration and conciliation. No one but Hitler could have put in motions such a procedure. The defendant could have been in a position to do so by Hitler's order only. He had not even a claim on giving advice, if Hitler chose to ignore him.

These points of view apply for example to the following treaties enumerated by the prosecution:

Convention for Pacific Settlement of International Disputes of 1899 and 1907

Treaty of Arbitration of 1929 between Germany and Luxembourg.

It should be mentioned, moreover, that these agreements did by no means provide an obligatory settlement of political disputes.

As to treaties of arbitration and conciliation with Poland, Czecho-

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Slovakia and Belgium, concluded in connection with the Locarno treaty, the additional point applies - quite aside from the legal argument just mentiones - that they and the Western pact form a political unit. Even externally, this is expressed in the fact that these agreements and the Locarno pact are all of them annexes to the general final protocol of the powers participating in the Locarno conference. The question could, therefore, be asked whether the arbitration treaties share the fate of the principal treaty i.e., the Western Pact.

I should particularly like to point out that the procedure, laid down in these treaties had finally led, in case of non-settlement, before the League of Nations Council, wherein, at the time of the Western Pact, the 4 participating great powers had, or - as was the case for Germany - were to have permanent seats. The withdrawal of Italy and Germany from this political body deeply affected the principle of the political base which supported the settlement treaties. Moreover, the grouping of the powers had shifted so much that a part of the Locarno great powers, for example, Great Britain and France, had in the year 1939, gone into binding agreements with Poland, so as to take sides beforehand in the event of a possible conflict.

Concerning the treaties of arbitration and conciliation with Denmark and the Netherlands of 1926, I may be allowed to point out that the proceedings provided therein could not be applied at all, as there were no conflicts between Germany and aforesaid countries; quite to the contrary. Germany took steps which were aimed at the enemy belligerents, which were meant to be preceded in the occupation of these countries.

The Prosecution mentions, moreover, a number of assurance given by Hitler to countries with which Germany subsequently waged war. As Herr von Ribbentrop did not give such assurances in person, his participation could form a point of argument only if he had given advice to Hitler in this respect. No evidence has been produced to sustain such a suggestion. A large part of these assurance is contained in speeches made by Hitler before a German public, either in mass meetings or at the Reichstag. It is doubtful indeed whether such declarations, addressed in the first place to the German public, could have any binding results in the field of international law.

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Whereas up to now K have spoken about the actions that led to the outbreak of the war and its spreading, I shall now proceed to the second large complex of the indictment, which deals with crimes committed during the war.

The Charter, in Article 6b, declares violations of the laws or customs of war to be punishable. This conception is illustrated by a number of examples such as deportation, shooting of hostages, etc. But these examples do not limit this conception. We are therefore obliged--in the same way as with Article 6a -- to propose to the Court a qualification which it can use as a base for its decisions.

I agree in this conception with the procedure, proposed by the French prosecution. They declared that they would be free to give a more explicit definition of punishable offences which had not been fully defined by the charter.

What is good for the Prosecution is good for the Defense.

The use of the expression "Laws and Usages of war", as well as the enumeration of examples, forces one to believe that the Charter aims at violations of the classical "jus in bello". I therefore qualify war-crimes as offences against the law established between belligerants by agreement, or against prescriptive law, binding and recognized generally without special agreement. The several cases which come under the collective conception of war crimes must, therefore, each be examined as to whether they are to be regarded as such according to the traditional rules applying to armed conflicts between states. Whereas, in general, classical international law holds responsible the state as a unit only, there always existed in the usage of war the exception that also acting individuals were liable to be held responsible. Whether this responsibility of the individual person can be followed up in a punishing prosecution after the warhas been the subject of many discussions. One will be able to ascertain that in the ruling practice of states, the belligerant who was violated by a war-crime may also, after

the war, call to account the offender. If several states which have fought shoulder to shoulder in the war form a common court against the war-criminals of the conquered adversary, this court has the collective competency of all the states that form the court or have joined its charter.

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When speaking of the liability of individuals to be punished for crimes committed during the war against the adversary, who thereafter sits in judgment upon him, one would be thinking in the first place of former members of the combatting forces. Already at Versailles there were difficulties in answering the question to what degree military chiefs were to be made responsible. The idea to have a Minister of a cabinet (Ressortminister) held responsible under criminal law, so far, never has appeared. Also in Versailles the War-Criminals Committee was occupied with the question of making responsible non-military personalities from only political points of view. This committee discriminated clearly between war-criminals, which were to be judged by the allied court, and the guilt with regard to the outbreak of war for the examination and judging of which a special political international court was to be created.

By means of the traditional conception a Minister (Ressortminister) cannot therefore be held responsible for violations of the "jus in bello". The prosecution can reach this success only by going the roundabout way via a conspiracy. If we follow the interpretation given to this conception, the Foreign Minister of the Reich would, for example, have to be responsible for the destruction of the village of Ouradur. He would have to stand up for actions which have nothing in the least to do with the Reich's foreign policy and are only single actions of some odd offices.

As the hearing of evidence has shown, the Reich Foreign Minister was not only not competent for the conduct of war, but had in fact not the slightest possibility of influencing military measures either in a curbing or furthering way.

If one should want to regard the various Ministers (Fachminister) as a community of conspirators also with regard to war crimes, it would have to be proved that the mili-

tary, competent to conduct the war, acted in agreement with the ministers or at least after having given them the necessary information.

The compilation of military command offices and ministers to a union of will, directed towards the execution of actions criminal and abominated by all decent people, is an artificial subsequent construction of the prosecution. The unity, which did not exist at the time at which it is supposed to have worked, has but now been drawn up as a conception. It is self-evident that a criminal procedure cannot be built up on such a method.

Herr von Ribbentrop can therefore not be punished without consideration for all war-crimes committed during the war on the German side. Such a responsibility for the results would be outright grotesque. He could, on the contrary, only be responsible for individual actions if he himself participated in certain concrete individual actions.

Herr von Ribbentrop is accused by the prosecution that, according to testimony of General Lahousen, he issued "directives" to Admiral Canaris to have Ukranian villages set afire, and to beat the Jews living there to death. First I wish to establish the fact that even a Foreign Minister cannot issue directives of any sort to a military agency. Furthermore, it would have been wholly nonsensical to issue such directives for the setting afire of Ukranian villages. Ukranians supported the German fight against the Poles. Thus, hardly anyone will believe, that Herr von Ribbentrop at that time advised the destruction of his own ally. My client further insists that not one word was mentioned about the beating to death of Jews in that particular conference, especially so, as in this connection no reason for it existed.

I beg the Tribunal to base their decision on charges of war crimes and crimes against humanity raised against Herr von Ribbentrop, on the general attitude of the accused with respect to questions of humanity. As was proven beyond doubt by the evidence, Herr von Ribbentrop saved the lives of 10,000 allied

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prisoners of war through vigorous, personal intervention. As I will further show, within the framework of the conspiracy, he was instrumental in the unshackling of British prisoners of war and he used his influence for the preservation of the rules of the Geneva Convention. He was opposed to the branding of Russian prisoners of war.

These are examples upon which the Tribunal may base their decision with respect to questions of humanity.

In problems where he was not actively involved, this may appropriately gauge the remaining attitude of the accused, as concerns questions of humanity. Further, his attitude in the question of treatment of terror-aviators is charged as a war crime to Herr von Ribbentrop.

My client, as well as the defendant Goering, deny that the conference at Schloss Klessheim, mentioned in document 735-PS, ever took place. I should like to emphasize that General Warlimont, who made these notes, did not personally participate in the conference. Furthermore, the expression of opinion attributed, according to the document, to Herr von Ribbentrop, stands in contradiction to his usual demeanor in this question. Under Secretary Steengracht deposed here that Herr von Ribbentrop, after the publication of the notorious article about lynch justice in the Reich, at once vigorously protested against it.

Further evidence concerning the problem of terror-aviators, through examination of the witnesses Colonel-General Jodl and Fieldmarshal Keitel, proves that not only the Foreign Office but Herr von Ribbentrop personally had pledged themselves in principle for the preservation of the Geneva Convention.

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and that Herr von Ribbentrop and other leading personalities took pains to assure the retention of at least the basic human principles even in Hitler's most radical period. In spite of all that happened, it must be pronounced as a success that, in consequence of these steps the Geneva Convention was not abrogated. Hereby it must never be overlooked that especially in cases of terror fliers, where so-called terror-attacks in the form of air bombardments were involved -- which were characterised by an indiscriminate attack upon cities without attacking military and armament objectives, such attacks then undeniably constituted a war crime in themselves. It must be taken in account in the reaction throughout Germany towards the conduct of air warfare of the western powers, that, according to established and traditional conceptions of an armed conflict between nations, the attack on the civilian population is prohibited. This thought is not only expressed in the Hague Convention on land warfare but constitutes a stipulation by contract of general International Law, binding for all, which is valid not only in the theater of operations on land. Acknowledging this, the Hague rules of air warfare, although permitting air attacks of military objectives in undefended cities, do not permit the bombing of dwellings of the civilian population. Although the Hague rules were not ratified, they were in practic followed by all belligerents, and acknowledged as common law.

Those measures became especially acute after complete air superiority had been achieved by the Allies and the resulting constant low level attacks with weapons on board on the civilian population took place. These particular events led for the first time to the discussion whether, in the face of a warfare which was undeniably violating International Law, it was still of any use to uphold the Geneva Convention in its substance. These considerations and corresponding reflections led to the drafting of documents which have become the object of evidence in the proceedings and which constituted -as shown by the evidence- drafts but not decisions in this question. They can therefore not form the basis of a judgment, as certainly a state is entitled to have appropriate agencies express their opinion on this question.

With the permission of the Tribunal I presented the role of Herr von Ribbentrop before the war, at its outbreak, and for its duration.

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Beyond this the prosecution holds all defendants responsible for ever crime presented here. The notion "conspiracy" is being used for motivating this common liability.

If the consequences were drawn from this extravagant accusation then each defense counsel would have to deal with all details presented by the prosecution. The obvious impossibility to use up so much time of the tribunal shows how questionable the basis of the accusation is.

Therefore I have to confine myself to examining the participation in th conspiracy from the viewpoint of the actual and legal position of the foreig minister in the third Reich.

Conspiracy in the sense of the Charter and of the Indictment means a sort or form of participation in a punishable act.
This kind of offence was until now, unknown to German and continental legal thinking. It existed only in the Anglosaxon law. In this legal sphere conspiracy means participation in a punishable act which requires, as a minimum symptom, an agreement to commit a crime.

A further pre-requisite is that the mutual plan causes the perpetratio of a definite punishable offence.

The Charter proceeds from this form of participation in a crime in declaring punishable all offences stated in Paragraph 6, assuming the existenc of a conspiracy or a common plan, as a special form of participation in these crimes. The Charter then stipulates, in Paragraph 6a, another special form of conspiracy declaring punishable the participation in a common plan or conspiracy to carry out offensive wars or wars violating international treaties.

Under the conception "mutual plan" ythe Charter and the Indictment obviously understand something that reaches beyond the sphere of conspiracy. Mr. Justice Jackson himself admitted that the application of the conspiracy as an offence, according to Anglosaxon law, was exceeded and a conception created which is not yet juridically determinable.

Both forms of conspiracy constitute a liability for a l l acts committed by a n y o n e person carrying out both these forms of conspiracy.

The indictment uses conspiracy as a pattern in order to make the participants in this alleged conspiracy appear as a whole.

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The conspirators are all on board of a pirate ship which, contrary to law and justice of all nations, engages in robbery and therefore is outlawed Anyone who punishes the crew helps to restore justice.

At first glance this picture appears to be attractive. However, on closer inspection, it becomes obvious that it is only a matter of a catchwor which tries to apply the community of the ship's crew, united with the ship for better or worse, to the place of the -- by no means a comparison more complicated conditions of a modern state organization. The ships of all nations are according to established, commonly recognized and uncontested conceptions, authorized to combat piracy on the high seas upon encountering a pirate. The criminal jurisdiction of almost all nations knows explicit regulations for combatting them. The peculiarity of this offence in distinction from o t h e r acts punishable in every country, whether committed aga' own or foreign nationals -for example white slavery traffic acts, acts of for ging coins, and so forth- is the circumstance that the jurisdiction is carrie out on the high seas. Therefore, the mistaken idea may arise that a crime in the sphere of international law is concerned. This however, is not the case. Piracy is a common offence, the prosecution of which is, by international law, permitted not only, in coastal waters but also on the high seas belonging to all nations. The basis for this conception was laid in the United States in the beginning of the last century by decisions rendered by Chief Justice Marshal.

The acts with which Herr von Ribbentrop is charged were committed at a time during which the German Reich and its opponents confronted one another first in peace and then in war, on the stage of international relations. An example taken from the sphere of international conception of a conspiracy of an entire state apparatus. Besides, the arrow hits the archer himself. In the first place, the idea of the statem which according to the conception of the traditional international law is the

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only carrier of rights and duties, is being destroyed so that the persons standing behind it and acting on its behalf may separately be made liable to criminal prosecution. As usually only few persons acted directly as participants in the acts charged, the multitude of those people is then again compressed into an artificial whole, in order to hold them responsible also for those acts which were not committed by them.

Here the criticism of the jurist had to set in. According to our perception of law and also to the perception of law of all civilized nations, the criminal responsibility is tied only to a few basic rules showing but few divergences. According to continental law only such persons can be held responsible for a punishable act who deliberately or negligently contribute to a definite act. By unanimous conception the perpetrator, therefore, is supposed to know the plan to which he allegedly contributed; to foresee and approve of the acts committed in executing it.

The participation in the form of conspiracy was until now known as an offense only to a limited legal circle. Therefore it is familiar only in a part of the legal systems of those nations who carry on or have joined in the present proceedings. It was completely unknown to the German Idea of Law and therefore to Herr von Ribbentrop at the time of his political activity. Conspiracy as a form of complicity marks a much wider range of actions as criminal than Herr von Ribbentrop could have anticipated at the time of his activities in the field of foreign policy.

But even if this form of complicity is assumed as a base for legal findings according to the charter, neither the official position as Reich Foreign Minister, held by Herr von Ribbentrop nor theindividual acts committed by him in this capacity made him liable of becoming a member of a conspiracy.

The case of von Ribbentrop, shows in particular, how, through the introduction of the concept of a conspiracy, responsibilities are getting interlocked, which have nothing whatever to do with each other, if we take into account the official position and authority as well as the personal attitude of the individual conspirators.

The prosecution , however, compresses, in order to achieve their aim, into an unity artifically, and subsequently created a number of actions and individuals , chosen at randdm, which do not form any natural unity and of which

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most of them had nothing to do with each other at all. If we followed the charter and the indictment, there would appear as result the fact - wholly alien to any actual and legal thought - that Herr von Ribbentrop, while personally and actually, as thoroughly proven by evidence, completely eliminated from any influence on the occupied Eastern territories, would have to bear the responsibility for war crimes and crimes against humanity committed there, whereas, for instance, the defendant Streicher although he headedhis special department, would be answerable for the foreign policy.

If one confirms the existence of a conspiracy to commit war crimes and crimes against humanity would practically result in making Herr von Ribbentrop and the Foreign Office responsible for such crimes, whereas evidence has shown that this very office has always tried to observe the rules of warfare, according to international law, and to adhere to the Geneva Convention even if this involved a severe struggle with Hitler.

The conspiracy to commit war crimes and crimes against humanity can only refer to actual offenses against rules of war, either individual actions, as e.g. the execution of escaped British Air Force officers, or certain measures incompatible with the adopted rules of war. At any rate, the unity of conspirators ought to refer to a specific action or specific groups of action of the same nature. It is impossible to hold a defendant responsible for actions not approved by him, or which he has tried to prevent. I think the prosecution will agree, that there simply cannot, exist any conspiracy to commit crimes against the usages and customs of war. This concept is so controversial and is so undetermined inpractice of the states and in the theory of international law, that individual acts, which, in the course of a war, may be considered as war crimes could not form a part of the plans of the conspirators. It must also be considered that the development of means and methods of war modifies also the contents of the concept of war crimes. Therefore, there cannot be but a conspiracy to commit specific or war crimes or war crimes of the same kind. Therefore, any one of the so-called conspirators cannot be held responsible for each and every action which an objective judgment must define afterwards as a war crime. Particularly, it would not meet the purpose of the guilty, if the defendant would be punished, according to the general and

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artificial concept of conspiracy exclusively, even for such war crimes which they tried to prevent with all their efforts.

THE PRESIDENT: The Tribunal will recess now.

(A recess was taken).

DR. HORN: With permission of the Tribunal, I shallcontinue on Page 79 of my final plea.

This point of view applies particularly to Herr von Ribbentrop. Not only did the military conduct of war not belong to this sphere, but he was, as was proven by

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evidence, expressly excluded from it by a repeated order of Hitler. His department had only insofar to do with war crimes as they led to negotiations with foreign powers. Moreover, the fact, for instance, that after the terrible air raid bombardment of Dresden, the execution of 10,000 allied prisoners of war, was prevented on Herr von Ribbentrop's initiative with Hitler, proves that he has done, when informed of imminent war crimes, what was in his power to do and within his influence. These arguments and the result of evidence show how unjust it would be to share the point of view held by the prosecution, e.g. to hold a Foreign Minister with reduced authority responsible for crimes against usages of war and humanity, the more so, as it has been conclusively proven that he was excluded from any influenced on the conduct of war.

With the court's permission, I shall now deal with the alleged conspiracy for planning and preparation of aggressive wars and of violation of treaties. Within the frame of such a conspiracy, the defendant is apparently to be held responsible in his capacity as Minister for Foreign Affairs and the office formerly held by him in the diplomatic service.

This kind of conspiracy appears to deal with any act or plan which have any connection with war, its preparation, outbreak and course. Any individual act within this enormous complex of concepts is irrelevant in itself from the point of view of criminal law, and has had, until now, never been conceived as a crime called "outbreak of war." This kind of conspiracy does not contain any facts which come under the crimes, so far known by any system of criminal law in the world.

Therefore, I cannot but investigate this complex from the point of view of von Ribbentrop's ministerial position and his relation to the German Reich which waged the various wars.

Herr von Ribbentrop, since the 4th of February 1938, held the position of a Minister of Foreign Affairs of the German Reich. As shown by the evidence, Herr von Ribbentrop was called to his office at a time when the actual leadership of foreign policy had already passed to Hitler in his double capacity of Reich Chancellor and head of the state. I have submitted as a document Hitler's speech of July 19th 1940, held atthe Kroll opera house, where he emphasized that Herr von Ribbentrop had had to handle for years foreign policy according to Hitler's political directives. Herr von Ribbentrop, there-

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fore, did not possess the position of a minister, as customary in modern constitutions. As shown in above-mentioned speech, he did not possess it either in fact or in law. This is shown by an examination of the public law of the Third Reich.

According to constitutional law, as it has developed in modern states in the course of the 19th and in the beginning of the 20th century, the department of the Minister of Foreign Affairs belongs to the executive functions.

The Minister for Foreign Affairs has to share the responsibility of conducting foreign policy with the Prime Minister. This involves in a parliamentary democracy, responsibility to the representatives of the people; in a monarchical or presidential constitution to the head of the state. This responsibility is actually of political importance only, and infers the resigning of a minister from his office when he does not enjoy any longer the confidence of parliament or of the head of the state. Most constitutions make provisions for indicting a minister by the representatives of the people in case of violation of official duties. But even when convicted by a constitutional court in a kind of criminal procedure, the minister is not punished, but his actions are merely declared to have been illicit.

Both possibilities to call ministers to account were provided by the German constitution of the Weimar republic. By the way, the possibility of indicting a minister has never been made use of.

Constitutional law of the Third Reich utterly changed this state of affairs. A short time after Hitler had come to power, parliament was asked, with reference to existing internal difficulties to give its consent of an "Enabling Act" (Ermaechtigungsgesetz). The German people and its representatives expected at the time that this authorization was to be used temporarily, and merely for the removal of actual distress. This law became, however, the foundation of a complete transformation of the constitution.

The possibility of being responsible to a parliament did not longer exist. It changed into the responsibility towards the Fuehrer and Reich-Chancellor, in whose person the authority given up by parlaiment now rested. Now there remained but one responsibility: that towards the head of the state. Starting from this parliamentary authorization all functions, derived from the power of the state, concentrated more and more in Hitler personally. The

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traditional division of power, the result of more than a century old struggle for constitutional rights became an empty shell by joining together all means of power and thereby obsolete. The power was concentrated in the hand of the Fuehrer, who had it applied by his plenipotentiaries separately. The theory of the state-law of the Third Reich designated this as change from the actual to the functional division of power.

The single Minister, after this change had taken place, did not act any longer under his own responsibility but only by the order (Auftrag) he had received from the head of the state. What applied to the individual, also applied to the former Reich-Cabinet. It had no influence any longer on state-leadership but was a common conception for various branches of administration technically separated. As the political tasks no longer existed with which normally the Ministers as a group had to deal with -- and so to the cabinet -- the tasks of the council of the Ministers were done automatically by the weight of the facts. Therefore, as the hearing of witnesses has shown, it never met during von Ribbentrop's period of office.

Even the title "Minister" did not signify any longer the head of a department of administration (Reichsressort) but became a mere title expressing a rank.

The result of this reform was that the Minister for Foreign Affairs also did not have any longer the right to set down the directives of foreign policy. The hearing of evidence has shown this fact also in the form of speeches and utterances of Hitler, in which he, e.g. after the Rhineland occupation and the "Anschluss" of Austria said, that he brought about these, as he called them "great decisions" against the will of his advisers by his own decision and referring to his responsibility towards the German people and history. Seen from the state-law point of view this means that no minister had the possibility of preventing the decisions. Also from the state-law point of view he was not authorized to examine the legality of the Fuehrer's decisions. Because from the just-described concentration of all functions of state power in Hitler's person followed that he was authorized to carry out legislative and executive functions. A special form of the act of legislation was no longer provided for in the Third Reich. Also there was no measure by which from the contents of the Fuehrer's decisions one could draw conclusions,

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whether he acted in his capacity as law-giver or as head of the executive. The conception of material law, laid down in Germany as in all continental states till the assumption of power (Machtuebernahme) completely lost its meaning; also individual directives were given in the form of laws.

In all constitutions the authorities whose task it is to apply laws are forbidden to examine the contents of these laws. This is even valid for jurisdiction, how much more for agencies of administration. The application of a law that was made in the correct way, provided for by the constitution must not be refused by any office in the state. The action of examining even by the law courts is limited to the question whether the way laid down by the constitution has been followed. This is also the case in Great Britain and the United States, wherein decrees issued by the executive may be subject to examining with regard to their contents but not laws passed by parliament.

In the state law of the Third Reich there was only one authority for all expressions of will of the state; the Fuehrer. It often could not be found out on account of the dissolution of the conceptions of state law in which capacity he acted. The doctrine of state law of the Third Reich therefore was debased to a theology of revelations of the Fuehrer. The old discriminations ceased to exist in the thinking of the Ministers. The only question that could arise in state law of the Third Reich was, whether the will of the Fuehrer was expressed in a clear enough way as to contain the will of the state.

This practice of constitutional law was unmistakeably the result of having transferred the pseudo-military way of thinking to the sphere of politics. The conceptions obedience and discipline were transferred onto a department in which they did not belong.

In connection with the statements on the elimination of the traditional division of power we must point to a fact, which is just as characteristic for this despotia sui generis as it speaks against the existence of a conspiracy or a common plan.

The hearing of evidence shows no kind of council-giving or controlling agency to the head of the state. Neither the cabinet nor the Reich- defense-council nor any other advisory committee had any influence on Hitler's decisions.

The key documents and the statements of witnesses only show monologues

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of Hitler before an increasing audience. All, that has the appearance of a council, is in reality reception of orders. The hearing of evidence has shown it to be certain, that efforts to influence Hitler could at the most lead to reactions not to be precalculated.

Herr von Ribbentrop and several of the other defendants, without doubt, had considerable power in their own sphere which did not interest Hitler. They were, however, completely denied to participation in the great decisions on war or peace, armistice, peace offers etc.

In the position of Foreign Minister, as held by Herr von Ribbentrop, an independent personality could not be tolerated. Herr von Ribbentrop was aware of this as Under Secretary of State von Steengracht has testified here. He stated: Hitler could have use for an Under Secretary for foreign affairs but not for a Minister of foreign politics.

This development of practice of constitution and government can hardly be reconciled with the thought of a common plan and conspiracy. The conspiracy demands, as we have seen, a combination and agreement in aims at which the participants form their will freely. The political practice of the Third Reich only knew the acclamation.

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So far, my examinations have been based on the norms of actual criminal law as laid down in par. 6. I should not like to close my statement without drawing the Court's attention to the relation between politics and law.

The essential contents of politics is and remains, in the life of sovereign states, the defence of the interests of one's own people. In order not to let this interpretation of politics become debased to unscrupulousness, international life has established the concept of the settlement of interests, and diplomacy as representative of this principle. It has been diplomacy which has had an essential influence in establishing the principles of international relations and, therefore, of international law. The imperfection of international legal order is caused by the co-existence of many countries, which were acting on a base of equality. Its Achillean heel was the lack of any superior authority which could have been in a position to ensure the existence of legal order in the same way as the authority of a state is able to do within its own borders. For all the time unrestrained display of forces has, therefore, played a far greater part in the international sphere. Statesmen are committed to take care of their people's interests. If they fail in their politics, then the countries they were acting for, have to bear the consequences, and they themselves are judged by the judgement of history. But in a legal sence they were responsible only to their proper country for acts which their country was charged with, acts looked upon as infringing international law. The foreign country injured by the action in question could not hold responsible the acting individual . The partition erected by international law, respectful of national sovereignty, between the acting individual and foreign powers, was only removed in the case of war crimes, whereof I have spoken.

At any rate, such was at the beginning of world war II, the conception of international law, and it was not affected by any opposing attempts.

The chief French prosecutor gave a reason for the indictment of leading men of the late regime the fact that a German government, which might be able to take jurisdiction in these cases, was no longer in existence.

I have the fullest esteem for this most elegant argumentation, but it cannot remain hidden to a critical observer that such a sharp logic has led to a false conclusion. Any organized resistance headed by a national government came to an end when the German Wehrmacht was utterly defeated and the

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whole of the German territory occupied by the Allies.

The 4 principal victorious powers, which form this tribunal, acquired, together with actual authority, a legal title recognized by international law concerning any decision as to the fate of the German national territory. They could have divided up Germany. But they chose another way. In the Berlin declaration of June 5, 1945, they assumed "supreme authority within Germany, including all the powers possessed by the German government, the High Command and any state, municipal or local government or authority." But this was all. The declaration expressly emphasized that the transfer of the said authority did not effect the annexation of Germany.

The exercise of the claimed powers was transferred to the Control Commission, composed of the commanders-in-chief of the four occupation zones.

Since the Berlin declaration Germany is in a transitory state still lasting at present. At the Potsdam conference held in July 1945 the four powers have come, among themselves, to further agreements, made public by means of the statement of August 2, 1945. The Potsdam "Agreement for the establishing of a Council of Foreign Ministers" transfers to the said council the preparation of a peace settlement, which is to be ratified by a German government "when a government suitable for this purpose has been constituted." A second agreement provides regulations concerning Germany under allied control

Those wordings make it clear that Germany is to remain a national state, that it is being placed under allied control and that the establishment of a German government is planned. This government is to accept, at a future date, peace conditions. This involves a government which is in a position to enter into commitments towards foreign powers as an internationally qualified partner.

The victors have accordingly chosen to exercise their power for decision given to them by conquest in such a manner as not to destroy the German State. During the transition period they themselves exercise the functions of the - temporarily non-existing - German government. We are therefore entitled to take the Potsdam Declaration as a foothold for the legal interpretation of Germany's position.

The German state, accordingly, has not been annihilated. Germany is burdened with obligations, which arose from her past. This is possible only, when the state upon whose attitude the obligation is based on and the one who

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must answer for it are countenanced as one and the same legal body.

Though the German State, at the moment, is not in position to act according to International Law through its own organs, it has not vanished from the sphere of the international legal order.

The final deductions of Mr. de Menthon cannot be accepted in view of the fact that his suppositions are wrong Therefore the jurisdiction of the victorious powers over German Nationals with regard to acts connected with National Socialistic policy cannot be based on current International Law. Thus, the Charter deviates from the international legal order. Furthermore it contradicts fundamental principles of criminal law.

If the French prosecutor is of the opinion that the Tribunal exercises the Authority of the German state to punish, a state which according to the opinion of Mr. de Menthon does not exist at this time, then he must logically apply the sentence "nullum crimen sine lege" to the criminal law existing in Germany. An act could therefore be made punishable only, if at the time of its commitment it was punishable according to the German law. This does not apply to personal criminal responsibility for the violation of international treaties and assurances, as well as for the participation in the conspiracy and the common plan.

In recognition of this, the Control Council for Germany in its proclamation No.3 has reinstituted in the system of German criminal law, two international principles, wherefrom the Hitler Regime had deviated : namely, prohibiting retroaction and analogy.

The political criminal concepts of the Charter create new legal principles which have to be considered as the germ of a code of world law. Herr v. Ribbentrop, at the time these incriminating events took place, lacked the perception of such a code of world law. One can dispense with the principle, that a crime can be punished only if its elements are stated in advance, only in the very few cases in which the cruelty of the act is so evident that its deserved punishment is beyond doubt. This could hold true for crimes which, in consequence of certain measures of the abnormal amorality of the Hitler Regime, were during the last years not punished in Germany.

I have heretofore presented the evidence from the point of view of the valid International Law and the charter which you Mr. President, in the cession of 20 June 1946, have again stressed as the basis for legal findings in these

proceedings. Up to now, the code of international law has been unable to solve the problems which are to be decided here. On the basis of these shortcomings, the second world war broke out. The repercussions of this catastrophy - which could not be prevented by this legal order - cannot be fully evaluated today.

To prevent their recurrences in the future, this is the high aim of humanity as expressed in the treaty of London of 8 August 1945. That the objectives of this treaty could not be reached is shown with alarming certainty by the fact, that on the very day on which the charter of this Court was proclaimed as a new law of the world, the war between the Soviet-Union and Japan broke out. Its possibility had been predicted to the allies of the Soviet-Union 6 months prior to that. To justify it, it was pointed out that Russia had to settle an old account with Japan. In other words, this typifies a case of an unprovoked attack.

I have illustrated, that the attack and the attacker cannot be defined by a general definition inside the sphere of the phenomena of reality. The attacker can only be branded by a World authority. This supreme organ of humanity must possess not only an actual but also a moral authority. Universal trust must be put in its impartial judgment. It must be an Areopagus which stands above the conflicting parties and before which these parties can only appear, searching for justice, but not to participate in it as judges.

We are in a period of transition from an old law, under whose rule the ruins around us were created, to a new code of world law, which takes shape but is as yet not morally and effectively consolidated.

To judge and punish the acts which were committed by the former Foreign Minister Herr von Ribbentrop, his share in the happenings, the limits of his capability, and his own personal guilt is a difficult task, taxing human endurance almost beyond strength in this period of transgressions and development.

THE PRESIDENT : We will call on Dr. Nelte, Counsel for the Defendant Keitel.

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DR. NELTE (Counsel for the defendant Keitel): "We must approach our task with so much inner deliberation and mental integrity that this trial will later appear to posterity as the fulfilment of human longing for justice."

These words of Justice Jackson in his opening indictment speech must be the guiding principle for all those who have been entrusted with the noble task of contributing to the search for truth in this trial. That this truth cannot be absolute the prosecutors Justice Jackson and M. Dubost have already stated. The purpose of the indictment is not to determine the historical aspect, let alone the historical development of this short but so tragically important period, but instead to find out whether, and to what extent, the defendants sitting on this bench partook in the events which have affected the entire world by their consequences, and which have brought such indescribable misery upon it, and not least upon the German people.

In this trial the Prosecution once stated through one of its qualified spokesmen that it was its task to submit material that would incriminate the defendants, and submit only such incriminating evidence. Thus, in contrast to the principle of objective accusation which dominates the German criminal proceedings, it made clear its definitely biased standpoint in an indictment which obliges the defense to submit all circumstances and consider -

THE PRESIDENT: I have already corrected this misstatement which you have made in your speech here, in dealing with one of the other speeches for the defense. It is not the practice of the prosecution to conceal any evidence which tends in favor of the accused.

DR. NELTE: I am afraid I can't hear.

THE PRESIDENT: What I said was that I had already corrected the erroneous view which is expressed in this paragraph in your speech, that it is the practice of the prosecution to conceal anything they know which may tend in favor of the accused.

DR. NELTE: Mr. President, on this very spot Mr. Justice Jackson stated, "We cannot serve two masters", when he replied to the statement that according to German criminal law the prosecution would also have to produce material in favor of the defendants.

What I am stating here is not said in order to raise any type of accusation against the prosecution. To the contrary, from the point of view

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for which it stood it has done everything that was possible. I merely wanted to justify my point of view as defendant's counsel and say why --

THE PRESIDENT: The only reason I interrupted you was because of the sentence in your speech, "It made clear its definitely biased standpoint." In the second paragraph, the second sentence of that paragraph, you say, "Thus, in contrast to the principle of objective accusation which dominates the German criminal proceedings, it made clear" -- that is, the prosecution made clear -- "its definitely biased standpoint in an indictment..."

DR. NELTE: I said "one-sided", that contrary to the governing principle of German criminal procedure, which is objective indictment, it has made clear its definitely one-sided standpoint of indictment which obliges the defense to submit all circumstances and considerations which are indispensable for an objective administration of justice.

THE PRESIDENT: Go on. It may be a different translation.

DR. NELTE: For this purpose, it is first necessary to clarify certain concepts which are needed for the perception of responsibility and guilt. As far as concepts of International and Constitutional law are concerned, they have been examined and presented by Professor Dr. Jahrreis.

With regard to the sphere of the soldier I should like to make some fundamental statements.

There have been repeated references here to the concepts of soldierly conduct, obedience, loyalty, performance of duty and patriotism. It is my belief that all men recognize these concepts to be good. But it is permissible to say that not all of these concepts are unequivocal. Thus are proposed: "best soldierly conduct" and "militarism", "natural obedience" and "despicably blind obedience", "the categoric imperative of the performance of duty", and "the exaggerated sense of responsibility", "the deep love for the country", and "chauvinism".

We see that all these concepts can run through the scale of good and evil. The origin and the essence of these concepts is everywhere the same, but the form they take on through tradition and education, and thus the effects they have, vary greatly.

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However, if this is the case, who then should differentiate and decide whether the feeling is still in the realm of good or has already reached the sphere of evil?

We are all of us living in a world whose century-old striving has aimed at the creation of order. Order is certainly a relative concept, too, but it is everywhere the establishment of the relationship of human beings to each other which guarantees the best possible means of living peacefully side by side in view of the intrinsic character of each country.

This holds true both for the state and for the relationship between nations.

Who should determine in this order what is right and what is wrong? The criterion for this might be, according tohitherto acquired knowledge, only a constitutional, i.e. a national one. The drawing closer of the nations in world traffic and general civilization brought withthem the result that the various national concepts became adjusted to each other in spite of many difference. It must be admitted that this process of adjustment suffered a harmful set-back through certain national-socialist doctrines and their methods. Nevertheless, the principle remains inviolable that the criterion of right or wrong must be a national one if order is not to be dissolved. The only thing worth striving for is the adjustment of nations and national fundamental concepts to each other as is now being attempted through world organization.

If the national criterion, i.e. the national judgment of good and bad, right and wrong, was well-established in any case up to now, the concepts were never deprived of their relativity, especially when national differences existed for other reasons. A convincing example of this is the opinion expressed about the resistance movement.

All countries celebrate what is considered to be the highest form of patriotism when someone risks his life for his country and exposes himself to the greatest danger. According to the Hague Rules of Land Warfare it is a fact that such a resistance movement is forbidden. We have here a clear example of the contrast between ethical and legal evaluation. This proves that there are no absolute concepts of good and bad, or right and wrong, and that above all written law there are unwritten laws which acquit the wrongdoer

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because he obeyed higher laws. Those higher laws, however, also depend on subjective and national - i.e. collectively subjective - considerations. If men believe something to be good or right this faith may come into existence out of an actually higher law, a truly higher idea, but it may also grow out of a misled faith, out of a false idea. Who wishes to or who is able to judge whether a faith or an idea was or was not right? History has proven that usually the successful idea is recognized as right, to a certain extent because it is the judgment of God. I do not wish to decide whether that is always true. The question here, however, is whether the people whose guilt is to be judged, acted in good faith, in accordance with such an idea and such a faith. If divine judgment has shown this faith to be wrong, the question remains open whether it was for comprehensible or explainable reasons that people could believe the idea to be good.

This question constitutes the problem which concerns not only defendant Keitel but also the entire German nation. According to the speech of the French prosecution not only the defendants in this trial are the really guilty ones but the entire German nation.

The extent and importance of this thesis are tremendous. Should the Tribunal - if only in the grounds for its decision - come to the conclusion that the entire German nation is guilty, every German for incalculable time will bear the brand of Cain which finally must lead to the destruction of this people, and its dissolution.

It has been stated most authoritatively that there is no intention here of accusing the entire German people. Through unconditional surrender we are left entirely to the mercy of the victorious powers. It was said however, that the verdict of this tribunal is to be just. Here in this court it is not clemency or inclemency which are to be the guiding principle, but justice. Justice does not mean mildness. A verdict, however, will only be just if it takes into consideration all the circumstances which underlie the actions and conduct of the defendants. There is no excuse for what has happened and for what forms the subject of this indictment. I can only try to give you an analysis. The misery, the misfortune that has fallen

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on the entire human race is so great that words do not suffice to express it. The German people, especially after having learned the catastrophe that has befallen the nations in the West and East and the Jews, is shaken with horror and pity for the victims. The German nation knows what this misfortune means; for it is stricken as hardly any other people is, not only in the military field but through the sinister consequences of air attacks, through the loss of millions of its youth in the field, through evacuations and escapes in ice and snow. We know, therefore, what it means to be in misery, to have to suffer. But while other nations are able to look upon this misery and misfortune as a chapter

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of the past and in the protection of constitutional order have the comforting hope of returning to an orderly existence and a happy future, there still rests upon this nation the gloom of despair. By affirming the guilt of the entire nation the verdict of this Tribunal would perpetuate this despair. The German people does not expect to be acquitted. It does not expect the cloak of Christian charity and oblivion to be spread over all that has happened. The German nation is ready to the last to take the consequences upon itself. It is willing to accept its fate and to do everything to participate in removing the consequences. It hopes, however, that the Souls and hearts of the rest of mankind will not be so hardened that the existing tension, in fact the existing gulf between this nation and the rest of mankind will remain.

Your taks your Honors, is a terribly hard one. We not only speak different languages, all of us feel with the soul of our own country. Much of what has happened in this country will seem incomprehensible to you. The feelings of the German people in its different categories are not your feelings. One of the most essential points, especially in the case of the soldiers, seems to me the way of judging what is felt to be liberty. In this country, too, the ideal of liberty was proclaimed. All of us know that the most extreme form of liberty is anarchy. No state desires anarchy because it means surrender of its own existence. If therefore, all countries agree that the absolute concept of freedom is never worth striving for and can never be sanctioned, there results, perforce, relativity of the concept of freedom. No concept has been so misused as the concept of freedom and yet every political system proclaims freedom as the greatest of all blessings. By that, I by no means wish to say that the concept of freedom as proclaimed by National Socialism was the right solution. What I do wish to say, however, is that national socialism also knew the concept of freedom and made it clear to the people through propaganda that its conception of freedom was the right one. National Socialism was aided in this by the fact that under the effects of the Treaty of Versailles Germany could indeed make no claim to be really free. The limitations of its sovereignty were so pronounced and so evident that it was easy for national socialism to proclaim the fight for freedom of the fatherland.

As long as the fatherland is recognized in the world as the highest earthy possession one will have to understand endeavours to keep this possession and one will not be able to disapprove of them even when it is an adversar who makes them. One may be of a different opinion as to the method which should be used for the realization of these endeavours and as to how freedom is to be attained. This, however, is not decided by the individua but by that person or those persons who hold the power in a state. Every human being wants something to hold on to in life; he must have it if he is not to fall into despair or anarchy. The national order is, besides the moral order, a firm support and the foundation of his existence and this gives him a feeling of security in his life and professional activities. It is the deep longing of all civilized men for order which finds its highest fulfillment in the institutions of the state. On the other hand, the citizen must have confidence that the state, i.e. its official agencies will safeguard law and order. In this respect it should not matter which party provides the guardians of its inviolable principles. That is just where the confidence of anation as a whole expresses itself, namely by leaving leadership to the prevailing majority. National Socialism undoubtedly aimed at and suceeded in rousing the belief in wide circles of the German people that its endeavours were supported by the majority of th people. It thereby procured for itself the alibi of legality.

Far from all political considerations, as all the generals and admirals have testified here, the leaders of the Wehrmacht believed in the legitimacy of Hitler's government. It looked upon itself as the instrument of a legal government, as it did when the Kaiser, Ebert and von Hindenburg were Germany's representatives.

Like all tendencies, all forms of expression of a feeling, the feeling of patriotism and of a soldierly attitude bears in itself a tender cy to become more radical and thereby to degnerate if external circumstances create an actual basis for it. We have experienced the exaggeration of sound national ideas and their development into national chauvinism and we can observe retrospectively how the sound soldierly idea was exaggerated by influences foreign to its nature and transformed into the militaris tic way of thinking.

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All these developments are not desultory, which makes them easily recognizable and regulated. The driving forces are mostly not apparent to those who they concern. They are like a poison which acts slowly and unnoticed, and the effect of which finds some day a horrible eruption. It needs no special reasoning that a part of the soldierly and military person who is being geared to a possible war, is ruggedness, and in its potentiality turns into brutality. One often finds on the part of famous, and not only German war leaders the stand point that the brutal war is frequently the mildest one if it leads to a quick ending. This, of course, is desired by every war leader. Once the obstacles of peace are removed by the war, all that remains is brutality. It reveals the causes of total war and the source of the terrible disaster, which resulted from it.

The defense has a difficult task in this trial. The German people look to Nuernberg and with dissension in itself. Some are sceptical and partly tile toward the Defense because they believe the Defense is favoring those whom they consider as war criminals and believe that the Defense wishes to prevent that just punishment be meted out to the defendants. Others say the trial is just a show, at which the defense counsel act, as dummies to give the trial the appearance of a judicial procedure. Accordingly, in the view of these Germans we would make ourselves guilty of patronizing the enemy.

We have no reason to justify our actions because by our participation at this trial we are fulfilling an obligation in line with the precept of our calling. which needs no justification.

It consists of coordinating our efforts in the interest of clarifying the truth, the importance and effects of which on the German people is today inclaculable; in getting to the bottom of the causes, and in answering the question of how all, this could have happened.

Only the clear recognition of the cause, the forces and the people that brought on the disaster over this world will create the possibility for the future of our people to find tis way again to the rest of the world.

The task of this Tribunal is not to search for the political, economic and metaphysical reasons for this Second World War and not even to examine the flow of events in its entirety, but rather to determine whether and what part these defendants played in that which the victor nations made the object of these proceedings.

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The task of the Defense, within the framework of their cooperation i finding the truth, had to consist of examining which actual and legal point if any, could be stated in favor of the defendants. It should be said here that with all the cooperation on the part of the Tribunal shown the Defens in producing their evidence, the actual possibility of bringing on defense material was extremely limited. Justice Jackson said in his basic prosecu ting speech :

"The accuser and accused are obviously --"

THE PRESIDENT: You seem to be coming back to further attacks upon t way in which this case has been tried and that is not what you are here to now. What you are here to do now is to present the case on behalf of the defendant Keitel.

I see that further on here you go on to complain about alleged non-communication to you of various documents and you refer to a discussion o the subject which took place as long ago as February of 1946. On that oc sion I expressed the view that on behalf of the Tribunal, that the French prosecution might properly show to you or give you the opportunity to loo at their documents. From that day to this, that is to say from February until July, you have made no application to the Tribunal or made any com-plaint to the Tribunal that that has not been done and now, in your final speech, you make this complaint that you have not been allowed to see the documents in spite of the fact that in February I expressed, on behalf o the Tribunal, the opinion that you might see such documents.

Well, it seems to me that it is a waste of time, a waste of our tim now to make these complaints after all these months, apart from the fact that you have already spent time which has been involved in reading eleve pages of your speech without coming to anything which really affect the defendant Keitel.

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DR. NELTE: Mr. President, I believe that away back in February you told the Prosecution, according to the record, that they should place these documents at my disposal. The Prosecution, unfortunately, have not placed these documents at my disposal.

THE PRESIDENT: Why did you not come back to the Tribunal? You knew perfectly well that I had expressed my opinion on behalf of the Tribunal, and if there was anything to complain about, you had full access to the Tribunal from February until today. It seems to me that it is a frivolous complaint to come now.

DR. NELTE: I hope, Mr. President, that nevertheless the facts which I am putting to you in my manuscript will be considered by the Tribunal, and in a particular sense I shall refer to this matter at a later stage. On 1 February the session took place during which this affair came up, and on 12 February I went to the French Delegation.

THE PRESIDENT: That is what I have stated, Dr. Nelte. I have already pointed that out to you.

DR. NELTE: And the French Prosecution did not give it to me.

THE PRESIDENT: Why did you not come back to the Tribunal if you had any complaint to make? I have said -- and I repeat -- that I think to make a complaint now after not having made it for all these months is a frivolous complaint and an attempt to create prejudice, and I should be glad of your explanation.

DR. NELTE: Mr. President, it is merely an attempt to show you that I did not wish to raise a complaint about the Prosecution right away, recognizi as I did that the Prosecution did not want to help me. I am not inclined to raise complaints with higher authorities, and I did not want to do it in this case either.

THE PRESIDENT: Dr. Nelte, I think that is a most unfair and a most improper thing for a responsible counsel to say. I think the mention of such a complaint is, as I have said, simply an effort on your part to create prejudice against the French Prosecution and against the fair conduct of this trial.

DR. NELTE: No, Mr. President, in my view it was merely meant to

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show you how very difficult it was for us to find material for our clients.'

THE PRESIDENT: Well, perhaps you will try and get on to something that is really material for the Tribunal to consider.

DR. NELTE: May I ask you to turn to page 15 where, under Figure 3, I am dealing with the documents. The document governs the hearing of evidence before this Tribunal. Against that the witnesses remain in the background. The more essential it is that we examine these documents to ascertain the possibility of their utilization and their probative value. The Prosecution has submitted as evidence to a large extent official reports which are admitted according to Article 21 of the

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Charter. I intended to show with respect to a number of these documents that the value of such documents is only limited. But I shall limit myself to a few fundamental arguments in this connection trusting that you, Your Honors, in examining this kind of evidence will take my statements into consideration. These numerous official reports submitted contain factual statements which to a great extent are based on witnesses' testimony. These testimonies are not always related in the form of protocols but as summarizing reports. I do not want to dispute that these testimonies of witnesses are made as depsoed in the reports. However, I will not do injustice to any of the witnesses who are not known by the Tribunal, whose testimony is hard to verify for lack of a personal impression, when I say that it concenns mostly very subjective attestations. There are a number of documents in which this is clearly recognizable , and in fact stated, and even documents in which hatred finds its clear expression. I can understand the hatred of these hard hit people. The suffering they had to endure was so great that one cannot expect objectivity from them. I may, however, say too, that such personal feelings are not conducive to rendering the testimony of these sorely afflicted a suitable basis for finding the real truth. I am thinking of the formula of oath so often heard here on the part of the witnesses:

"Swear that you will tell the truth without hatred or fear, the whole truth, and nothing but the truth."

These official reports often contain not only factual statements, but final conclusions and judgments. Insofar, the probative value of these official reports cannot be recognized. At the present these judgments go so far, that outside the sphere of those directly involved, they level reproaches against agencies, i. e., the OKW, and Keitel, without it being possible to recognize fromthe document itself, on what the conclusion drawn rests. Aslong as it is a question of the indictment of an individual like the defendant Keitel, one must have recourse to documentary proof which yields concrete facts for responsibility or which at least reveals casual coherence. Above all, it cannot suffice, in order to consider Keitel's responsibility as proved, if in such reports crimes committed by soldiers and officers of the Army or of the Armed Forces are alleged, and we derive responsibility on the part of the defendant Keitel, from this fact alone because he was the chief of staff of the OKW.

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It must be added that in these reports, military agencies have often been erroneously misquoted and confused, for example, when the defendant Keitel is spoken of as the "High Commander of the Armed Forces", which is called "OKW" (High Command of the Armed Forced), instead of "O.K.H." (High Command of the Army), etc. It is not always possible to decide to what extent it is a question of an erroneous conception on the part of the Prosecution or whether it comes from a translation which is not in accordance with the meaning. In order to examine the responsibility of the defendant Keitel, I wish to make clear to the Tribunal, in a manner which excludes any doubt, what were the channels of command and competence, and to this end I have submitted two documents to the Court.

a) "The channels of command in the east" (Document book II K 10)

b) "The development of the situation in France 1940-1945 and the military authorities" (Document book II K 13)

The letter affidavit has also been signed by the co-defendant Jodl. I will refer these affidavits and make them the contents of my argument without reading from them.

I shall leave out thefollowing paragraph and come to the Indictment against Field Marshal Keitel. I shall skip over pages 19 to 21. The reading of the general Indictment and the special Indictment in the trial briefs can be omitted here since, with the exception of the Jewish problem and the persecution of the Church, there is no part of the Indictment which the Prosecution has not raised against the defendant Keitel.

I should merely wish to point out that the original general Indictment holds Keitel responsible only for the period after 1938 and that, as the first point of the Indictment, Keitel is described as Chief of the Supreme Command of the Armed Forces of Germany. According to the evidence submitted by the Prosecution, Keitel was also held responsible for the period after 1933 although the American, British and French Prosecutions have seem to have dropped the allegation that Keitel was Chief of the Supreme Command of the Army and the German Armed Forces. The indictment of Field Marshal Keitel is split, therefore, between the periods 1933 to 1938 and after 4 February 1938 until the end.

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I shall now continue on page 21, the last paragraph.

Herewith the defendant is not only indicted as a member of the conspiracy but is also accused of persoanlly participating in all the crimes. This comprehensive indictment is a result of the space which the Prosecution has devoted to the defendant in its statements.

The name of no other defendant has been mentioned so often by the Prosecution, as that of the defendant Keitel. Again and again we hear the words "Keitel - order", "Keitel's decree" and just as often "order of the OKW", "directives of the OKW" etc. in connection with Keitel's name as "chief OKW" after 4 February 1938. From this deprives the very substance of the Indictment, namely, the position the defendant Keitel occupied after 4 February 1938. But from it also derives the scope of the justification. Here, it is not a question of examing to what extent the defendant participated in the individual facts of the case, which in the long run arose from the so-called "Keitel-orders" or "OKW instruction", but what matters is the position he occupied; whether he took part and whatpart he took in the planning and execution of those orders and instructions, and finally and most important of all, whether his part in it was casual and culpable in the sense of the law which is to be applied here. It seems of consequence, to stress fromthe outset, several points of view, which are important for the treatment of the case and for its appreciation.

THE PRESIDENT: Would that be a convenient time to break off?

(A recess was taken until 1400 hours)

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AFTERNOON SESSION

(The Tribunal reconvened at 1400 hours, 8 July 1946)

DR. NELTE: The defendant has declared that he admits the contents of the general indictment to be proved from the objective and factual point of view -- that is to say not every individual case -- and this in consideration of the law of procedure governing this trial. It would be senseless, despite the possibility of refuting several documents or indicidual facts, to attempt to shake the indictment as a whole. Therefore, I shall mainly confine myself to the questions concerning the subjective facts and the conspiracy and I will treat only those individual points which are of special importnce as regards the personal participation of the defendant Keitel. The disproportion between the happenings and the defendant's present destiny is so great that the defendant Keitel, out of this consideration, would have to wish that such an attitude would expose him to the suspicion that he is fighting for his life, because he would have to fight at any rate out of moral constraint. But the defendant has already made it quite clear in his argumentation that he is not fighting for his head but for his face.

The Defendant belongs to those men who came into the public eye through Adolf Hitler's death. From 1938 onwards he was in his closest circle and was his almost permanent companion. It is clear to him what that means for this trial. It has often been alleged by the prosecution that by referring to the deceased the defendants desired to unload their own responsibility upon them. If the purpose of this trial is to obtain the most faithful picture possible of events and connections, it is not fair to start out by discrediting any mention of the deceased, who -- as the prosecution knows also -- are the major culprits. This is especially true for the defendant Keitel whose position, influence, and actions cannot possibly be correctly judged without throwing a light upon the person of Adolf Hitler and upon his relationship with Keitel.

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As can already be seen from Mr. Justice Jackson's speech of Indictment, we are dealing here with an indictment against the National Socialist system. Actually, the indictment is a global indictment against this system, split into 21 individual indictments. The individual defendants are, to a certain extent, more symbolic figures of the spheres of authority of the state which was ruled by this system: namely, the Party, Cabinet and Wehrmacht.

If I understand Mr. Justice Jackson correctly, he goes even further in saying:

"Above all personal forces are nameless and impersonal forces; their conflict with each other makes up much of humanity's history... What are the real forces which are battling here in front of you?"

This statement raises a problem which, Your Honors, cannot be left unmentioned at this trial, a problem which M. de Menthon also pointed out: The importance and influence of those forces which shape fate. Fate and guilt are two poles which do not exclude each other from their respective spheres; they are ranges which overlap so that there are spheres of life and spheres of effect in which the two forces are at work which make the world move. It can only be hinted at briefly here what forces are at work which shape fate, i.e. what forces cannot be considered as originating in the conscious will of the individual defendants, a sense of national unity, historic events, opinions which are rooted in traditions and environment. Therefore, I will have to go into this background insofar as it is relevant to the defendant Keitel as a person and type of one of the groups under indictment, because by this means only will you be given the possibility of obtaining a correct picture of the share which the defendant Keitel had in what happened.

I also want to state that everything I am going to say is said with the full agreement of the defendant Keitel; and insofar as aspects and facts are stated which might exonerate the defendant Keitel, it should be taken as a contribution

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towards the clarification of what happened and as an answer to the question of how it could happen. He does not wish

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to have his position or the part which he played in this drama minimized, but he would like to prevent, at the same time, a distortion of the picture of h's character. The defendant stated already on the witness stand that he was grateful for the opportunity this trial afforded him to give an account to the world public and the German people if what he did and why he did it. He wishes to help to ascertain the historical truth of what happened.

I consider it my obligation to make known this opinion of the defendant Keitel, because such an attitude, based on such reasons, made it considerably easier for me to conduct his defense. It was, and is clear to the defendant Keitel: if one considers the horrible consequences and monstrous deeds which--without raising here the questionof guilt--undoubtedly were committed by German people and which can indisputably be traced back causatively to orders and directives with which Keitel came into contact in some form, then one feels guilty without thinking about whether this is a guilt in the legal sense or the tragic feeling of being linked by fate with the causes and, thereby, also with the consequences.

The prosecution has maintained that at one time all the defodants had banded together with the Nazi party for a plan which they, indeed, knew could be realized only by the outbreak of a war in Europe.

With regard to the defendant Keitel, it is s aid that from 1933 on he took active part in this conspiracy.

To prove its thesis, the prosecution stated:

a) that the National Socialist program in itself, i.e. according to its wordking and meaning, could be realized only by using force;

b) that the defendant Keitel recognized or should have recognized it;

c) that with this knowledge, he, together with the others, especially with the co-defendants, planned and prepared aggressive wars.

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As regards these statements, I would like to call the Tribunal's attention, first of all, to the principle part of Mr. Justice Jackson's bill of indictment in which he deals with the program of the Party. He mentions there a number of points of the program, of which points he says:

"Naturally, these were all aims which were legally unimpeachable". At a different point he says:

"I do not criticize this policy, I wish it were generally recognized". Naturally, this acknowledging criticism is subject to the one limitation: "As long as these aims would be achieved without an aggressive war."

According to that, the prosecution itself does not presume that the wording and meaning of the Party program let the normal personsrecognize that these party-political aims could be realized by use of force only.

I do not wish to repeat what, in this connection was said by the individual defendants at their hearings in court. Especially convincing appeared to me what Dr. Schacht stated on this subject. He concludes his critical evaluation of the Party pro gram with these words: "That is essentially the contents of the National Socialist Party Program, and I cannot find that something criminal lies in that." I quote this statement especially because it shows how this program and its recognizable objectives affected a person who may be characterized as intelligent, realistically thinking, free from emotional impulses in politics, of economic far-sightedness and ability to judge.

If this person did not recognize that the Party aims were to be realized by use of force, how was the soldier Keitel to come to such a realization?

Keitel was an active officer. As such, he could not be a member of the Party. The officers were prohibited from any political and party-political activity. The Wehrmacht command was intent on keeping the influence of Party politics away from the Wehrmacht. This was true both for the time before 1933 and afterwards. Hitler himself confirmed this principle because he clearly recognized that the

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time was not yet ripe for giving the corps of officers, let alone the general officers, political character. According to tradition and interpretation of their profession, those higher officers had a "national attitude", as one used to say, and they welcomed the national points of the program which were put into the foreground by Hitler, they were glad about the cooperation of the Wehrmacht and without hesitation placed themselves behind the government led by Hitler when it proclaimed the fight against the Treaty of Versailles, especially against its military - political clauses. An agreement going beyond these aims or possibly a union with a political object in view did not exist. The generals, among them also Keitel, thought no different from millions of Germans who were not Party members or who were opponents, but who regarded the national aims as self-evident. Now, one cannot fail to see that it is something else of millions of Germans who have no influence, support that part of the program relating to the national aims or the high general officers who led the Wehrmacht. Furthermore, it cannot be overlooked that the materialization of these national aims carried with it the danger of a war. But the state of things seems to me to be such that the generals did not see the danger of war in the fact that Hitler wanted to realize these national aims by an aggressive war, but they saw the danger rather in the fact that an assertion of these aims would bring about sanctions by the former enemy powers. The idea of an agressive, warlike realization was far from the generals' minds for absolutely compelling reasons of military impotency. I shall later deal more in detail with this problem which is closely connected with the rearmament. Here is only important that the circles to which Keitel belonged -- and I should like to add, between 1933 and 1938 -- (1) had no contact with the Party program; (2) had no relationship with Party circles; (3) sympathized with a part of the Party program because it corresponded to their national attitude; (4) did not think of materializing these national points by an aggressive war, because it would have been hopeless in military respect.

Now one could argue that although the generals themselves did not think of waging an aggressive war, they recognized or should have recognized that Hitler had the intention, of not now, but in the near future, of waging an aggressive war.

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The prosecution believes to be able to presume that the defendant Keitel had this knowledge from 1933 on. The argument of the prosecution that this knowledge is the same as the knowledge of the National-Socialist program has been refuted; the same holds true of the knowledge of the book "Mein Kampf", even if one assumes he possessed the book.

Therefore, the question is only whether Ktiel had knowledge of Hitler's intentions regarding an agression for other reasons. For the period up to 1938 Keitel could not have obtained knowledge from Hitler himself, because Keitel spoke with him late in January 1938 for the first time.

The speeches which Hitler made before that time, just as those of the other Party leaders, were unambiguously aimed at preserving peace. Looking back one may call it propagandistic camouflage of the opposite intentions. Would that be the case, then this camouflage successfully deceived not only many millions of Germans, but also the foreign countries which were partly critical and partly hostile toward National Socialism.

Keitel believed the protestations of peaceful intentions, saw their honesty confirmed also by official proposals of disarmament and treaties with England and Poland. He believed them the more so because, as has already been said, an aggressive war had to appear to him as an impossibility.

The co-defendant von Neurath too, declared frequently that all his information and knowledge of Hitler's policy up to 5 November 1937 justified his firm conviction that Hitler did not want to realize his political aims by force or aggressive wars. It was only by the speech of 5 November 1937 that this conviction of von Neurath's was shaken.

In the arguments by Dr. Schacht's defense to which I referred, those facts were presented which show a contradiction between the former conduct of the victorious powers and the thesis which theprosecution upholds on this question. By their official relations and beyond them the victorious powers showed that, despite the knowledge of all circumstances the defendants are being accused of, which knowledge has to be assumed, they (the victorious Powers) did not believe in Hitler's intentions and/or did not recognize these intentions of realizing his aims by aggressive war.

The prosecution now accuses the defendant of having known or having

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had to know such intentions of Hitler. This does not appear to be convincing and I can leave it to the Tribunal which -- if all possibilities are taken into consideration -- had better possibilities to get information on Hitler's true intentions.

I believe the defendant Keitel may claim for himself the same good faith and the same ignorance -- unless this knowledge or even the participation results from other circumstances.

Such circumstances during the years 1933 through 1938 may have been: Keitel's activity in connection with the rearmament and in the Reich Defense Committee (Reichsverteidigungsausschuss).

The charge of illegal rearmament includes two facts which have been summed up by the prosecution:

(1) The secret rearmament by eluding the treaty of Versailles; (2) the rearmament with the purpose of planning wars of aggression.

For a judicial consideration, however, these facts must be kept strictly apart; since they are different with respect to cause and effect they must also be evaluated legally from different points of view.

The time between 1933 and 1938 is a fateful period, a period of development and conversion. The forces of the hitherto existing order are struggling against the new powers which have not yet taken a definite shape. Everything is in fermentation. The aims remain obscure: they are camouflaged by the existing nationalistic tendencies which have been taken over. By clever propagandistic utilization of these tendencies the psychological basis for the aims pursued by the new lords is being created without being noticed by those concerned by it.

Here lies the problem of the Armed Forces leadership and of the defendant Keitel during this period, with which I am going to deal now.

This problem cannot be solved without duly taking into consideration Germany's military position. In judging the then Colonel Keitel another consideration enters the picture: how the special sphere to which he belonged was affected by this situation. Keitel considered the Treaty of Versailles and especially the military clauses as a humiliation of Germany. He considered it a duty towards his country to collaborate in putting an end to this situation.

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He was convinced that the Treaty of Versailles, because of its impossible military and territorial stipulations, would have to be revised some day. Such a revision appeared to him imperative in the interest of justice, as well as reason, if a lasting world-peace was to be preserved. On the basis of this conviction, he believed that as a German and a soldier, he was entitled, in the official capacities in which he acted during this period, to interpret the military stipulations of the Versailles Treaty literally even if this was in contradiction with the purpose of a stipulation. He justified this before his own conscience by considering that the stipulations limited the possibilities of development in an unbearable manner, that is, in a manner completely insufficient for an effective defense.

Without having actual interests, he did not consider it wrong for Germany under the given circumstances to construct submarines in Finland not for herself but with the purpose of gathering experience and training specialists; or to operate construction offices in Amsterdam in order to observe the progress achieved in the field of aeronautics and to make herself useful without actually building planes.

As symptom of the way democratic Germany of that time thought -- without consideration of position andparty -- was Dr. Bruening's statement, which on 15 February 1932 was broadcast over all USA radio stations on the occasion of the meeting of the disarmament conference. I am going to quote the following passages from that speech:

"The inner-political fights in Germany are very sharp in their outside forms to be sure; but this sharpness must not lead one to overlook the fact that despite many things which cause division there exist indisputably things of common possession also. On the two decisive foreign-political questions of today, the questions of disarmament and reparations, uniform opinions prevail among the German people. The demand for equal rights and equal security is shared by the entire German people. Any German cabinet will have to uphold these demands. The fact that the fight of the parties over the roads which our politics must travel is, perhaps, sharper in Germany today than in some other countries, is a result of the deep misery which presses heavily on Germany and is deeply upsetting the people's soul."

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In connection with this point I also refer to the testimony which the co-defendant von Neurath gave on 22 June 1946. These words which Bruening spoke, prove that there was a demand which was upheld by the entire people irrespective of the difference in parties: The demand for equal rights and equal security.

The objection to that is: A demand even if upheld by the entire people does not in itself create the right to violate or circumvent opposing contractual regulations.

In principle, one will accept that. However, things were not as simple as that. I do not wish to presume upon a "basic right" of all countries according to which every people must have the right of creating for itself a certain state of defense. But even if

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one does not want to recognize such a "basic right", one will, perhaps, understand the state of emergency which actually exists if a country is so limited in its military potential that it is not only liable to military attack by any neighbor, but also politically condemned to impotency.

In the course of the hearing of evidence the Tribunal has had occasion to recognize that this was true with regard to the situation in which Germany found herself in the year 1933.

I want to call your attention to the following passages of the Marshall - report which was submitted to the Tribunal. The following passages written by this outstanding soldier who summarizes the experience of a patriotic and military life as regards the point discussed here under the title " Re-armament", as follows:

"Nature is inclined to pass over weak people. The law that only the strong survive, is generally recognized...."

"The world does not take serious the wishes of the weak. Weakness is too great a temptation for the strong."

"Above all, it seems to me, we must correct the tragic misunderstanding that a policy directed at security is a war policy."

The best witness with regard to this question which is so important for the defendant Keitel, is the book by the English Major General A. C. Temperley "The Whispering Gallery of Europe" for which the English Foreign Secretary of the second world war, Anthony Eden, has written a very friendly, agreeing preface.

THE PRESIDENT: Dr. Nelte, wouldn't it be possible for you to pass over the reading of these passages which come from the book of Maj. Gen. Temperly? The Tribunal will take notice of them. There are quite a number of long speeches from the book.

DR. NELTE: Yes, Mr. President, I intended to ask the Tribunal whether it would kindly take these passages and give them their official notice. Perhaps one certain passage might be of interest in which Mr. Temperly says -- and that is found on page 38, paragraph 4:

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(. "I also name the general staffs because there is no greater illusion than that they (the general staffs), taken as a whole, are in favor of war. I know the general staffs of many countries very well and have never known any general staff which would have glorified war or would have wished for war. They know too much about it. If they advocated strength, it was because they believed in the idea that armed strength can prevent war.

And I shall continue on page 40, paragraph 3. I refer to the statements by Dr. Henderson, Briand, and so forth. I continue.

In examining and deciding whether the defendant Keitel guiltily violated the military clauses of the Treaty of Versailles in the meaning of the indictment, the Tribunal will have to consider the facts which have been presented. Any individual charges on this point have not been made.

It is unquestionable that from 1933 on rearmament took place in the Reich. The defendant Keitel has admitted that and he stated that in the official positions he held up to 30 September 1934 and from 1 October 1935 on he participated in this rearmament in accordance with the functions incumbent on him. Like everything the Germans do, the rearmament, too, was well conceived organized. The Prosecution collected datas for that: Especially Document No. 2353 PS and the transcripts of the sessions of the Reich Defense Committee (Reichsverteidigungsausschuss) .

During the judicial collecting of evidence the total picture of this period from 1933 to 1938 was not clearly defined. The Prosecution

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arranged for its presentation of evidence retrospectively and drew a conclusion from the results of the war to the motive of the rearmament, but at the same time it deduced from the fact whic cannot be denied and has not been denied, namely that this rearmament could not be planned and carried out by any one man, that it (the rearmament) constituted a joint plot for the purpose of aggressive wars.

Where is the decisive criterion in military armaments or in preparations of a different kind for the case of war from which the conclusion may be drawn that these measures have an aggressive character, i.e. that they aimed at an aggressive war?

In principle from the armament itself, nothing can be deduced for the charged intentions; armament may, in fact must look just the same if it is carried out for security and defense as it does in case of aggressive war.

Therefore, if the intention of rearmament for the purpose of a plot is to be determined, distinction must be made between:

a) Armament and preparations of measures which must be taken for the case of a mobilization becaning necessary, in order to be ready for defense at any time

b) Rearmament and ordering of measures which exceed quantatively - or qualatively the volume under a) to such a considerable degree that from that fact the intention of the political leadership to begin a war will becane noticeable to the party concerned, in which case the political question of whether an aggressive, defensive or preventative war is intended, may be disregarded.

Therefore, in the last analysis, the decisive question will be whether in connection with these measures, the intention of the planning for an aggressive war was expressed or had becane noticeable by other means or whether the measures, because of their nature and volume demand the conclusive deduction that an aggressive war was prepared here.

In retrospect, the events are presented as the logical chain of a development according to plan. In reality, not only were

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Hitler's far aiming intentions and his planning imputed to an actual happening in whic, objectively viewed, a certain causality seems to be inherent, but also the knowledge and approving support of co-operating circles were imputed to it. There can be no dispute over the statement that the economic capacity of a country, which in its totality must be regarded as armament for the case of war, will eventually get to a point which must be considered of decisive importance for solving the question of when the rearmament, i.e. the status of the entire industry essential for war, exceeds the capacity of armament for defense.

In making these consi erations, it has to be taken into account especially for the defendant Keitel, as a soldier, that until he took over the office of Chief of OKW on 4 February 1938, he had not held a decisive position.

Now, what part did the defendant Keitel play at that date?

a) In the field of rearmament with regard to material and personnel,

b) in the field of administrative and - as charged by the prosecution - military-political rearmament which was dealt with under the heading of "Reichsverteidigungsrat" (Reich Defense Council).

Now I shall skip pated 43 to 46, since they contain the historical development of the organization data and I beg the Tribunal to take official notice of these matters, and I shall continue on page 47.

The prerequsite of modern warfare is not so much the exploitation and organization of the manpower of a country into military formations, but it is essentially a problem of industrial capacity and of its appropriate utilization for the production of all necessary war materials.

This process must of necessity precede any rearmament and requires expenditure of money and even more of time. (Establishment of industrial equipment stocks).

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When Germany proclaimed its equal rights as regards its need for national defense - that is, the supreme importance of its defense - it did not have the means to help its material rearmament as they had been taken away on recognition and execution of the disarmament plan. It has been confirmed here during the trial on different hads, that first 10, then 7-8 years were reckoned on, and foreseen in order to give material equipment in the hitherto prohibited modern weapons and supplies, especially munitions, to the peace time Wehrmacht which had been disclosed to the world with the proclamation of freedom in national defense in 1935. This becomes comprehensible if one considers that even the USA with its unlimited means, which were not impaired by the effects of war, required 4 to 5 years for the necessary conversion and rearmament in this war. It results from this that rearmament, if it is intended to exceed the limits of defensive armament, is only to be achieved gradually, in the case of nations, whic - like Germany in 1934, had no armaments.

1st stage: Creation of the prerequisites with regard to industries and raw materials (capacities) for the production of war supplies.

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Delivering of orders to the armament industry for the first equipment of the peacetime strength of the Wehrmacht and execution of these procurement orders within the framework of the means provided by the annual budgets.

Procurement of the ammunition and weapon supplies to be stored for the equipment of a mobile Wehrmacht, which is to be developed in the case of war from the permanent peacetime strength in accordance with the efficiency inmanpower of a nation. Those supplies are to include the necessary replacements during the war.

If one considers that im1934 Germany had no modern weapons, no submarines and no military aircraft at its disposal, it can well be believed that any soldier of judgment had to assume that under the given circumstances there could be no thought of a war, let alone a war of aggression.

Accordingly, the tasks which the defendant Keitel assumed in his official capacity of chief of staff of theWehrmacht bureau, must be considered as purely preparatory and organizational. Keitel is of course responsible for General Thomas, chief of the defense economy staff. Thetechnical details and the extent of his activity can be seen from document PS 2353, which is correct in essence despite the fact that Thomas, in declaration prefixed to this historical document, now wants it to look as if he had altered his original notes and given them a more favourable turn to please Hitler, this in case of the arrest he apprehended. This does not correspond to the facts. What Thomas wrote, proves according to defendant Keitel's opinion, that a "war armament" with mobilization of the industrial capacity and its conversion toward war economy began only at the beginning of October 1939. It further proves, that the statements of the defendants which were examined here, as far as they were connected with this rearmament, and especially Dr. Schacht until 1937, are in complete agreement on the following point: that it cannot be admitted that in this period wars of aggression were desired, and according to the momentary state of armament they must have appeared impossible.

But the rearmament in manpower also shows the same picture during this period. The evidence has demonstrated that until spring 1938 only 27 peace time divisions were poorly equipped and that 10 to 12 reserve divisions were in

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preparation; at that time the Wehrmacht had no other supplies nor armaments at its disposal. If, despite this fact, and without general mobilization, it succeeded by the fall of 1938 in preparing an army of almost 40 divisions for the aggression against Czechoslovakia, when at that time it had the poorest protection on its western front, one can see what wa the maximum war potential in those days. Under such circumstances and in knowledge of the armament situation and war potentials of neighboring countr which were mutually united by alliances and assistance pacts, none of the generals of the old school could ever think of occasioning a war. The fact, that already one year later, in 1939, the state of German armaments was substantially improved, must primarily be traced back to the occupation of Czechoslovakia.

Finally it must be pointed out, that during this period there was no strategic plan for any aggression whatsoever. General Jodl has declared on the witness stand, that when in 1935 he came to the Wehrmacht bureau, no plan nor anything similar was in existence, except what was foreseen in the case of internal unrest. The occupation of the de-militarized Rhineland zone was not planned, but was improvised by Hitler.

The "Initial Assembly and Combat Directives of June 1937" is a general instruction for eventual and possible military conflicts.

For the sake of completeness I must also call attention to document EC 194. This is an order issued by the supreme commander of the Wehrmacht, von Blomberg, on the subject of aerial reconnaissance and the observation of submarines movements during the occupation of the Rhine, Keitel signed and forwarded this order.

The Reichswehr had a permanent force of 100,000 men, as had been established by the Treaty of Versailles. It is indisputable that in view of the size of the Reich, its unprotected borders and the way East Prussia was cut off, this figure was absolutely inadequate for creating a feeling of internal security and the possibility of defense in the face of an attack from the outside world, such as may be considered for any country ar nation an elementary right. This state of insufficiency, which had been provided by the military clauses of the Treaty of Versailles, was discussed

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before 1933, already with a view to improving it without using the actual soldiers for it. An examination was made and it was found that in cases of mobilization a series of tasks could be taken over by the civil ministries. Hereby, it was a question of tasks of a purely defensive nature, which cannot in any way be considered aggressive. They were tasks of national defense, and principally, the following.

I ennumerated them in my manuscript and without reading them, I should like the High Tribunal to take judicial notice of these points. As is quite clear, these are matters for defense only.

The advisory body for these tasks and their execution was, up to 1933, the committee of advisors. (Referentenausschuss) It consisted of advisors coming from the different civil ministries, who after being recognized by the ministry of the interior (Severing up to the end of 1935) met for conferences at the Reich ministry. The Reichswehr minister charged the then colonel Keitel to direct these meetings. At the latter the advisors received and discussed the desires of the Reich ministry as regards the aforementioned tasks, which the individual ministers could take over in case of a mobilization.

During Minister Severing's time this cooperation worked without friction in order to satisfy as far as possible the wishes of the Reichswehr minister, and it went on in the same way after 30 January, 1933. The scope of the tasks and the composition remained the same. When on 4 April 1933, a Reich Defense Council was established through a resolution of Hitler's new Reich government, the committee was maintained; it changed only its designation: the committee of advisors became the Reich Defense Committee. However, it did not change its field of action and was not charged with any new competency. It only grew in size as it went on developing, especially after the introduction of general military service. Now as before, the Reich Defense Committee was a body, which had to give advice in questions of national defense, concerning the civilian sector, which had to be prepared and also partly taken over by the civil ministries. For this count of the indictment it must be made quite clear that, after 4 April 1933, Keitel's position did not change either, and especially that he did not become a member of the Reich Defense Council."

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The Reich Defense Council, which has taken up a lot of room in the statements of the prosecution, may be considered as factually non-existent according to the result of the evidence produced - later on I will come back to the time after 1938. In any case, the prosecution could not prove that there was any session of the Reich Defense Council during this period. The protocols submitted dealt without exception with the session of the Reich Defense Committee and themembers of this committee reported to their competent ministries, which inturn, had the opportunity to give, in the framework of the cabinet, the necessary concrete form to the suggestions and proposals discussed in the Reich Defense Committee. For this reason there were never any sessions of the formal legally existing Reich Defense Council, so that witnesses could rightly say that the Reich Defense Counsil existed only on paper.

Up to 30 September 1933, as colonel and section chief in the War ministry, and later, from October 1935, as brigadier general (Chief in the Wehrmacht bureau of the Reich war minister), Keitel was a member of the Reich Defense Committee.

Therefore, from 30 September 1933 to 30 September 1935 he was not in the war ministry, and thus had no function connected with this count of the indictment. During this time also he did not participate in sessions of the Reich Defense Council, the protocols of which have been presented by the prosecution as having a specially probative value.

The session of 22 May 1933, denoted as the 2nd session of the working committee of advisors, was the last session in which Keitel participated before being transferred to duty with the troops. Thefirst session after his transfer to the Reich War Ministrywas heldon6 December 1935; it is put down as the 11th session of the Reich Defense Committee. And, therefore, in the examination of Keitel's responsibility, although one has to exclude the above protocols as well as the work done in general by the Reich Defense Committee during the two years of sessions 3 to 10, I will nevertheless make them the subject of my statements, as it is from these protocols that one can see what the Reich Defense Committee was doing.

Only the knowledge of these protocols makes it clear why the creation of an institution , which exists in this or some other form in every country,

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and which serves the purpose of national defense doomed legitimate by every country has now been presented as an important argument in the evidence given of plans and preparations in view of aggression.

The protocols of the sessions of the Reich Defense Committee in 1933, 1934, and 1935, reveal the character of the work as that of preparations for the event of war. But it is likewise evidence, that it is a question of preparations which were intended to bring about a more perfect degree of readiness in national defense in case of mobilization.

If the "Political situation" is mentioned twice, these allusions point to the fear in neighbouring states of military sanctions. Reference is made to the case of Abyssinia, which led to sanctions against Italy.

Everything is rooted in the thought of overcoming that state of military impotency, which made it impossible to secure the open frontiers of the Reich.

The ever-returning necessity for secrecy can only be considered as fear deriving from the situation at the time that the publishing of measures, though of a defensive nature, would produce preventive measures on the part of the victorious powers.

That these suspicions were well grounded is shown by the intransigent attitude of certain states after the complete disarmament of Germany.

This question is important for Keitel's attitude, for he affirmed that the conclusion drawn from the prescribed secrecy was erroneous and that the secrecy was a proof of a bad conscience, and the bad conscience a proof of knowledge of illegality.

The Committee of the Reich Defense never insisted that it was an advisory body in matters of national defense insofar as the civilian sector was concerned by a mobilization. At no time did it ever indulge in discussions concerning rearmament as regards manpower or material or concerning plans of aggression.

The prosecuting authorities have tried in one instance to show proof that the Committee of Reich Defense was contemplating plans for aggression.

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I do not wish to read the next few sentences. Here we deal with the liberation of the Rhine River, a question which was designated as the technical liberation of the Rhine River. This came up in Goering's testimony.

I shall continue on page , paragraph 3:

The true nature of the Committee's activities is set out quite simply and clearly in the "Bookof Mobilization for the Civilian Administration." It refers to the result of discussions between all the members of the Reich Defense Committee and is an appendix to the mobilization plan of the Wehrmacht as well as to that of armaments.

These three mobilization plans taken all together form the basis of your decision. You may see from them whether the prosecution is right in its supposition of a total planning of aggressive war, or whether the defendant Keitel was right when he stated during his hearing: "What has been discussed and planned here is what every country is entitled to do and what the responsible agencies are bound to do, if they do not wish to violate their most sacred duty, namely the safeguarding of the security of their country."

The decision of 4 February 1938 was fateful for General Keitel as well as for the German Wehrmacht: For Keitel who could not yet form an opinion of the newly-created office of the "Supreme Commander of the Wehrmacht" with the high sounding name; for the Wehrmacht which lost on that day its relative independence. Hitler broke down the last barriers between himself and the Wehrmacht - the nation in arms - by removing both the Commander in Chief of the Wehrmacht and the constitutionally responsible Reich Minister of War. This truly portentuous decision became fatal for Keitel and the German nation, though at the time of its occurrence this was not realized by the participants. That they may be blamed for not realizing it, it is easy to say now in retrospect. At the time, everybody who was not an inveterate sceptic or pessimist had to base his judgement on the development of things in general and on the strength of the personalities involved. Neither the one nor the other could be clearly seen on 4 February 1938.

For the defendant Keitel, who did not know Hitler personally in those days and who met him for the first time as man to man in the preliminary discussions, the decision was none of his own. Hitler assigned him to the

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newly created office of Supreme Commander of the Wehrmacht and Keitel accepted it. Even if we disregard entirely the human emotions connected with such a seemingly brilliant promotion there was no reasonable ground for the Chief of the Wehrmacht office in the Reich Ministry of War to decline the offer, since von Blomberg himself had proposed him. The way Hitler considered this office could not be discerned by Keitel.

Now I shall turn and pass on to the next page, and shall quote from the statements made by Dr. Lammers and from the affidavit deposed by Blomberg, on page 59, I shall quote the penultimate paragraph:

"In the future, I shall not have any Minister of War; neither will I have in the future a Supreme Commander of the Wehrmacht to stand between me, thehighest commander, and the other high commanders of the Wehrmacht."

On page 60, from Blomberg's affidavit in answer to Question 24, I quote the second half:

"He asked for a suggestion for the assignment of a 'Chef du Bureau' who would direct and carry out current affairs under him and thus under Hitler's responsibility. I named Keitel, who, under me, had carried out this office very well."

In answer to Question 27:

"I proposed Keitel as 'Chef du Bureau' believing that I had put him on the right job."

In answer to Question 29, "Was it not Hitler's intention to create a tool for himself in the person of Keitel, whose capacity for organization and hard work seemed to him valuable, as an executive organ for his decisions and command?":

"This question is emphatically confirmed by me. Hitler's original intention at that time was most certainly to have at his disposal a trustworthy subordinate organ and in no way an adviser who claimed some responsibility."

The decree of 4 February 1938 regarding leadership in theWehrmacht is known to the Tribunal, so I do not have to read it to you. It results therefrom, for the position of the defendant Keitel and the questions of his competence and responsibility as well as from the hearing of witnesses, that:

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1) Hitler did not want either a responsible minister of war or any other person but himself to exercise the commanding authority over the entire Wehrmacht. He united in his own person both of these institutions by declaring that in regard to the commanding authority he would from now on exercise it directly and personally as well as the functions of the Reich Minister of War, which were to be administered by Keitel under his instructions.

2) Hitler also created a military staff as advisory council in military technical matters. He designated it as the High Command of the Wehrmacht. It was nothing more than the military chancellery of the Fuehrer and Highest Commander. Such chancellelleries were already existing as Reich Chancellery, Chancellory of the President, and Party Chancellery. The defendant Keitel was assigned to the post of Chief of the military chancellery with the title of Chief of Staff of the High Command of the Wehrmacht, nemaed for short, Chief OKW.

3) Hence, it follws that the OKW was not intended to be an intermediary agency between the Supreme Commander of the Wehrmacht and the three Wehrmacht sections. The contrary assumption of the prosecution, which is connected with a graphic representation, is founded upon an erroneous judgment. An intermediary level between the supreme commander and the three high commanders of the Army, Navy, and Air Forces as existed before 4 February 1938, with rights of its own, no longer existed now. The OKW, in which the defendant Keitel was the Chief of Staff, was no independent military agency or authority, but exclusively Hitler's military-technical staff and his war ministry office. The OKW had no independent authority whatsoever, neither the power to issue ordersnor the military authority. Therefore, the OKW could not issue its own orders. All instructions, decrees, general directions or orders issued by the OKW were rather the expression of the desires of the supreme commander of the Wehrmacht. The commanders-in-chief of the three Wehrmacht branches were always aware of the fact that no intermediary level existed between them and the supreme commander. They never considered or recognized the OKW as such. This is confirmed by the affidavits of the co-defendants Grand Admiral Doenitz and Raeder as well as by the testimony of Reich Marshal Goering and Dr. Lammers. It is an entirely erroneous conception

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that the OKW or in this case the defendant Keitel as chief of the OKW, would have had the authority to issue instructions or orders on his own. Every official business relation, oral or in writing, which went beyond an exchange of ideas with other military agencies or authorities was subject to the exclusive decision of the supreme commander himself. The OKW was merely the executive staff of the supreme commander.

4) Therefore, when documents issued by the Supreme Commanderor by the OKW show signatures or initials of the defendant Keitel, or those of a division chief or a section chief, in the OKW, one cannot derive therefrom the conclusion that an own, independent authority issuing orders existed. In each instance it was a case of taking notice of, forwarding or transmitting the orders of the Supreme Commander himself. Because of the heavy claims on Hitler's time in his positions as Chief of State, Reich Chancellor, Party Leader and Supreme Commander of the Wehrmacht, it was impossible to obtain always his personal signature, unless it concerned matters of particular importance or fundamental significance. It has to be noted that in all cases Hitler's personal decision or approval had to be obtained.

If in this state of affairs, the prosecution advocates the conception that because of the signing of documents or because of existence of initials the defendant Keitel is co-responsible for the factual contents of the documents, this cannot be accepted. It would be going by theletter of the law to derive the responsibility of the defendant Keitel as chief of the military chancellery from his forwarding or signing of orders, instructions and such, a responsibility which, in my opinion, can be laid only upon that person who issues or brings about the order by virtue of his authority.

A real responsibility for this could be laid upon the defendant Keitel only in case it would be proved that he wilfully and casually participated in deciding theseorders, instructions, etc.

THE PRESIDENT: Dr. Nelte, would that be a convenient time to break off?

(A recess was taken)

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M. DUBOST: Gentlemen, the Defense have presented a request to the French Prosecution concerning the communication of some documents. This request is divided into two parts.

The first part concerns the Scapini incident, which arose at the occasion of the publication of a document in the course of my own exposition. I am able to communicate to the defense counsel the answer which the French Government has made to its request, as the French Government has found in the documents left by the German authorities the answer which was made to the protest filed at the time of the massacre of French prisoners. It is, by the way, a purely dilatory answer. The German authorities answered that the Armistice Commission was not competent; that the request must be made by the Scapini embassy.

I have communicated this document to the defense counsel and I think that, on that side, this incident is closed.

A part of the defense counsel's request concerns a statement made by my colleague, Mr. Edgar Faure, who at the beginning of his exposition announced to the Tribunal that he had examined approximately 2,500 documents, of which he had retained only two hundred. I can, of course, not answer on behalf of Mr. Edgar Faure. I know only that the French delegation has only eight hundred documents, as a total of all its documents, and has submitted them all to the Tribunal and to the Defense. I therefore think that it is merely an oratorical figure and that my colleague wished to allude to letters of transmission which were of no importance.

In any case, I said earlier to the defense counsel, Dr. Nelte, that I had all the documents of our delegation open to him and that he would be able to see that we had no more documents than those which we had published. On the other hand, the request which we forwarded to Paris in order that complimentary documents which might have been forgotten should be sent, all these requests to Paris have remained without result. We therefore conclude that we have here all the documents which we could make us of in this trial.

DR. NELTE: Mr. President, I am grateful to the French delegation for the elucidations given now and with reference to which I had made complaints this morning. If I had had that explanation a few days earlier than what happened this morning would not have occurred. I regret it very much indeed.

I continue on page 64.

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In order to clarify as much as possible this qyestion which is so decisive for the defendant Keitel I would like furthermore to point out the following:

The instructions which were of fundamental significance for the planning of military operations, are operational orders issued to the Commanders-in-Chief of the three Wehrmacht branches by the Supreme Commander in this capacity. Before these instructions were composed, Hitler discussed with the competent OKW officers, also with the defendant Keitel, the military technical aspect of the order. The instructions, without considering the opinions manifested by the individual officers, were exclusively the expression of the Supreme Commander's wishes.

They were not intended for the OKW but for the Commanders-in-Chief of the three Wehrmacht branches to whom they were forwarded through the OKW. Thereupon, the three Wehrmachtbranches for their part ordered, on the basis of the general instructions, the details for the carrying out of what the instructions stipulated. Therefore, I shall not refer in this connection to the statement of the Charter according to which the carrying out of orders is not accepted as a legal ground for exclusion because the transmission of the order was not an order issued by the OKW to the Wehrmacht branches but the forwarding of the expression of the wishes of the Supreme Commander of the Wehrmach. The order directed to the OKW, if one wants to express it that way, referred in all cases to the elaboration upon some desire expressed by the Supreme Commander and to the purely external act of transmitting the ready-made decision without having the authority of expressing an opinion on this decision.

It must be assumed that the Prosecution, perhaps influenced by the defendant's rank, of Field Marshal, did not recognize correctly this position of the defendant Keitel. This rank was in no proportion to the real authority of the defendant to issue military orders. One is inclined to imagine that a General Field Marshal is always a military chief. However, as we have seen, the defendant Keitel had no authority to issue orders, whatsoever.

Field Marshal von Blomberg, whose testimony has been submitted to the Tribunal by the Prosecution, defines the position of the defendant Keitel, as Chef du Bureau. This definition is materially correct. A Chef du Bureau has

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to take care that the bureau which he directs operates properly; that the affairs are correct ly and promptly settled by the competent officials. But he does not participate in the final decisions considered by his superior, here the Supreme Commander of the Wehrmacht, as being correct. While this principle holds already true in general, it is especially true here. It is known that Hitler did not accept any advice concerning military decisions. This has been proven through the hearing of evidence, particularly through the testimony of General Jodl.

The defendant Keitel has clearly outlined in the Affidavit No 8 the activities of the OKW as "Coordination in the state and in the Wehrmacht." The affidavit gives an idea of the difficult and thankless work of the defendant Keitel.

It consisted mainly of a coordination of the desires and needs of the Wehrmacht branches. It consisted, furthermore, of the settlement of arising divergencies and of a struggle against Hitler's negative attitude towards any ordely settlement, i.e. through the competent channels.

In any branch of the armed forces there are interests which differ from the interests of other branches and which cannot be entirely satisfied; sometimes they even oppose each other. This is true especially for the replacement of personnel but also for the supply of everything that is required for special warfare.

The point of intersection of all these factual and personal differences of opinion was the OKW.

If one desires to rate at tis true value the incontestable fact that the defendant Keitel was shown hostility and was personally judged unfavorably by nearly all sides, one must note that this fact occurred as a necessary result of the overlapping of factual interests and personal differences of opinion which Keitel tried to settle by means of coordination or mediation, i.e. in nearly all cases by means of mutual compromising. No particular personal experience is needed in order to know that the objective mediator will always incur the ingratitude of both parites.

The same picture becomes evident in the relationship to the numerous offices which were provided with special official authorities or which had Hitler's favor and special confidence for personal, mostly party-political

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reasons.

One must realize these differen s and overlapping interests to appreciate the heavy burden of work involved in Keitel's position.

The realization of the special relationship between the leadership of the Armed Forces and the political sector is the more difficult as the functions of the High Command of the Armed Forces, of the Reich Minister of War and of the Chief of State were embodied in the person of Hitler, since February 4th, 1938.

Therefore, since February 4th, 1938, complete accord existed between the political leadership and the leadership of the Armed Forces due to the identity of the person.

The assumption suggests itself, and the Prosecution made it, that the chief of Hitler's military staff was so closely connected with its superior, Hitler, that he must be responsible for the political complexity, if not as the perpetrator, then in some form as provided in Article 6 of the Charter, This assumption is erroneous.

In this connection there is no need to enter into the hierachy of the Fuehrerstate.

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not absolutely good or bad, but that everything depends on the ways and on the methods of realization and the means of carrying out the principle. Keitel has a military background and favors the Fuehrer principle for the field he knows. According to this principle the responsibility lies positively with the one who has the authority to command. While the Fuehrer principle in fact hardly underwent any change in the civilian province, where it was also applied but where it amounted to no more than superficialities, this principle necessarily made itself felt much more strongly and obviously in the military sphere, particularly in the relationship between the Commander-in-chiefs and their Chiefs of the General Staff.

Formerly the chiefs of the General Staff had been the materially responsible Commanders, now they became the operational assistants to the Commanders. In the formulation of orders they were collaborators, advisers in the field of strategic operations, for which these officers had been especially trained.

Keitel was - that is certain - neither a Commander nor chief of the General Staff; he was the Chief of the Military Office (Militaerkanzlei) under Hitler, soldier and administrator of war ministerial duties; therefore, minister, claims the Prosecution.

One should not refer in this trial to distinctions which turn out to be formalistic when the real functions give another picture. This is particularly important in the case of Keitel. It should be determined what he actually was and how he acted in reality.

The dual position created by the decree of February 4, 1938, leads to an erroneous understanding of Keitel's functions. To begin with, Hitler dissolved the Reich Ministry of War because he no longer wished to have a Minister of War; in spite of the fact that on the 4th of February 1938 a considerable number of functions, handled up to then by the Reich Ministry of War, had been assigned to the individual Wehrmacht branches, the OKW retained a number of functions and their administration.

To do justice to the intended strict concentration of functions pertaining to the war leadership, Keitel was not at liberty to

attend to these on the basis of his complete authority according to his own judgment, but he had to present the demands of the Wehrmacht and coordinate the Wehrmacht's affairs with the duties of the other ministries.

It cannot and will not be denied that this concentration of duties in the person of Hitler was in practice unfeasible. Thus, an extensive amount of preparatory and executive work rested with Hitler's military staff, whose Chief of Staff was Keitel. Hence, also, the responsibility. But not with reference to important questions, especially those of a fundamental nature. It was, of course, a matter of judgment to what extent the defendant Keitel considered matters essential and fundamental and submitted them. But the evidence showed that when in doubt, Keitel was inclined to present matters rather than to make his own decision, after he had examined them conscientiously.

The sources from which Hitler got his news were so intricate that Keitel had no way of knowing whether Hitler got the news that seemed important to him through his adjutants, through Himmler and Bormann, or in some other way. To avoid afterwards the unavoidable discussions with Hitler who, being distrustful of everyone, always took it for granted that people would intentionally conceal things from him, Keitel was anxious not to leave himself open to reproaches for having omitted something. A characteristic example is the case of the mass escape of 80 RAF officers from camp Sagan.

In this connection the point is simply to state that Keitel in his capacity as custodian of the functions of the ministry of war which still remained in the OKW, held no position as a Minister. Here, too, he was the chief du bureau, the head of the military office, a position which is also held by the chief of a ministerial office, or even a state secretary. I wish to refer in this connection to Dr. Lammer's statement, already referred to by me, and to the affidavits of Grand Admirals Raeder and Doenitz which I have already mentioned here repeatedly.

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The text of the Fuehrer decree of February 4, 1938 shows that Hitler wished to make this clear. (1915-PS) If Hitler had not had the desire to exclude every third person from a responsible and perhaps to him uncomfortable function at the highest military sector, he might have given Keitel at least the authority to take part in Cabinet meetings. In the Fuehrer decree (2098 PS), in which the Commanders-in-Chief of the Army and Navy as well as Keitel had been given the rank of a ReichsMinister, it was explicitly stated that both Commanders-in-Chief shall be entitled to take part in Cabinet meetings. The fact that this was decreed simultaneously is a convincing argumentum e contrario. It proves that Hitler did not wish that his Chief of Staff of the OKW should perhaps have had opportunity to present his own opinions and possible doubts before the Cabinet.

That Hitler gave the defendant Keitel the rank of a Reich Minister had the purpose of enabling him to carry on direct negotiation with the departmental ministers. Had Keitel not have had the rank of a Reich minister, he would have been limited to conferences with state secretaries and such, thus very handicapped in carrying out the Fuehrer's orders and tasks.

It is erroneous, therefore, that the Prosecution termed Keitel as Reich minister, even as Reich minister without portfolio. He was no minister, and was no member of the Reich government. State Secretary Stuckart in a document submitted to the Prosecution has listed all members of the Reichsregierung. Keitel is not among them; he is mentioned in this document only as the holder of one of the highest offices.

Now, the Prosecution has not limited the term Reichsregierung to membership in the Reichscabinet, but considered other branches as part of the Reichsregierung, too. It would seem, therefore, as if the Prosecution looked upon the legal structure based on German law as irrelevant. Pursuant to Appendix B to the general Bill of Indictment, the Reichsregierung is, according to the Indictment composed of Members of the regular Cabinet after the

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30 January 1933, the day Hitler became Chancellor of the German Republic. The expression "regular Cabinet" used here means: Reich Minister, i.e., Head of Departments of the Central Government; Reich Minister without portfolio, Minister of State with the function of Reich Ministers and other officials entitled to participate in the Cabinet meetings.

I assume that my colleague, Dr. Kubuschok, will come to this during his case before the organization.

THE PRESIDENT: Dr. Nelte, the Tribunal feels that you are taking a very long time over this question of whether Keitel was -- what his exact position was.

DR. NELTE: I believe, Mr. President, that the Prosecution took a great deal of time to make clear what position Field Marshal Keitel occupied in their opinion. He has been described, not only as Field Marshall here and as the Chief of the OKW.

THE PRESIDENT: Well, if they have -- I must confess that I have forgotten. It seems to me and the Tribunal generally that you are taking up far too long on this topic and you have got many other topics which are of very great importance to the defendant, and you have already been speaking for several hours, and you occupied a large number of pages in order to try and define what Keitel's position was. I thought you might be able to cut it down.

DR. NELTE: I shall try.

I have explained that defendant Keitel did not belong to Group I; that is to say, that he was not a minister. I now pass on to the following paragraph.

Through the hearing of evidence, it was proved that, despite the Fuehrer Decree of 4 February 1938, there never was a Secret Cabinet Council; that such council was never set up; that it never held a session; and that no persons involved ever received a commission. Thus, it is proved that the defendant was never a member of the Secret Cabinet Council.

It is true that Keitel was a member of the Ministerial Council for the Defense of the Reich. Witness Dr. Lammers has

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confirmed that becoming a member of the Ministerial Council for the Defense of the Reich did not change Keitel's official position and especially did not make him a minister. In his affidavit of 25 November 1945, co-defendant Dr. Frick says that Keitel worked in the Ministerial Council for the Defense of the Reich as liaison man.

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I pass on to the next paragraph.

In order to clarify the defendant Keitel's responsibility and competence, it is necessary to analyze the concept of OKW. I ask, Mr. President, that this statement not be considered a theoretical and, therefore, superfluous discussion.

The very fact that the prosecution makes a sweeping and fundamental assertion--

THE PRESIDENT (Interposing): Dr. Nelte, may I ask what you have been doing if you haven't been analyzing the concept of the OKW?

DR. NELTE: Up until now I have explained Keitel's position as the Chief of the OKW. In statements on page 74 and the following pages I was going to explain to you that the prosecution, and others as well, have talked about the OKW: and "OKW" is a word which has three different types of significance.

Mr. President, if you will be good enough to permit me to submit this in its written form, and if you would consider it as having been presented in Court, then I am willing to leave out the pages up to 77 and submit them to you.

However, as it appears to me, this is an integral part of the explanation regarding the interpretation of the word "OKW", and, in particular, it is important to show that this is not identical with Keitel.

In that case, then, I shall continue at page 77.

In order to see clearly what part Keitel played in reality and what share he had in the happenings as a whole after investigating his legal competencies, I now wish to examine what actual influence he had upon the development and carrying out of the measures the effects of which constitute the subject of this trial. From everyday experience we know that it does not matter so much what a person should be in a particular position, but what he has made of that position by virtue of his personality.

I believe I may say that in the course of this trial the personality of no other defendant has been judged in such warying and contradictory ways as that of the defendant Keitel.

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Keitel's material responsibility is proportionate to his actual position in the tug-of-war with and around Hitler, his effective influence upon that group and with it on those circumstances as a whole which could prove the cause of the effects of Hitler's Headquarters in the military field.

I shall deal with this fundamental complex when taking up the charges made by the prosecution against Keitel on the strength of the cross-examination of Dr. Gisevius, in other words, after presentation of evidence has been completed.

In view of the comprehensive scope of Justice Jackson's questions and the answers given thereto by Dr. Gisevius, the testimony of Dr; Gisevius has become of tremendous importance in the case of the defendant Keitel.

Had Dr. Gisevius' statements about Keitel been true--i.e. statements made by him in most instances in terms of conclusive findings, derived from information--the defendant Keitel would not have told the truth during the presentation of evidence. The importance of that fact becomes evident when it is considered that a negative opinion on truthfulness would of necessity destroy Keitel's defense, which in its essence draws on the subjective aspect of facts as a whole. In view of this fact and the importance of the testimony of Dr. Gisevius also for other defendants, it becomes my duty not to leave anything undone to explain the contrast between Keitel's answers and the testimony of the witness Gisevius.

Experience has taught that dead witnesses are the best witnesses because the rendering of their purported utterances cannot be directly refuted. Testifying on the strength of information belongs to another group of statements which almost defy refutation.

The testimony of Gisevius combines both possibilities in that he bases his testimony primarily on information obtained from witnesses who are dead. It seems to me that Justice Jackson uses Dr. Gisevius as star witness in his global attack on the defendant Keitel After completion of presentation of evidence against Keitel he did not bring forward one individual circumstance but an indictment on all counts.

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The counter-presentation of evidence is concerned, on the one hand and as far as possible, with proving the objective incorrectness of facts based upon information obtained from certain individuals, and, further, with establishing proof of the unreliability of the information. I call to mind the words which the defendant Keitel said under oath upon completion of his direct examination by me while in the witness box?

"One may hold it against me that I was wrong and made mistakes, that my attitude toward the Fuehrer Adolf Hitler was wrong and weak, but it should not be said of me that I was a coward, that I was untruthful, and that I was disloyal".

I repeat in condensed form the charges made against the defendant Keitel, during interrogation by the Prosecution, as follows:

1) Keitel built an inpenetrable ring round Hitler so that the latter could be told nothing.

2) Keitel failed to pass on to Hitler reports he had received from Canaris whenever such reports covered atrocities, crimes and the like, or he gave orders to modify them.

3) Keitel had a tremendous influence on the OKW and the army.

4) Keitel threatened his subordinates, when they made political statements that he would not protect them; he even said that he would turn them over to the Gestapo.

Dr. GESEVIUS says in one part of his statement that KEITEL had no influence over HITLER. He exonerates HITLER by explaining that KEITEL had formed a ring round HITLER, in order that the latter should be told nothing.

The English and American prosecution, in their indictment, called KEITEL a powerful staff officer who had exerted great influence over HITLER; the French prosecution described KEITEL as a willing tool of HITLER; the German generals called him a "yesman" who could not carry anything through; and now KEITEL grows, according to the statement of Dr. GISEVIUS, into a real handyman and buffer of HITLER, who hid from the latter anything bad, who submitted to him only what he, KEITEL, saw fit, and permitted no one to approach HITLER.

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The prevention of access to HITLER by KEITEL, as asserted, can only be maintained by somebody who did not know the conditions prevailing around HITLER. Before the war KEITEL worked in Berlin in the Bendler Strasse, while HITLER was in the Wilhelmstrasse. KEITEL came perhaps once a week to report, or on special order. At that time, on account of space conditions, it was in fact impossible for KEITEL to exert any influence over access to the Fuehrer.

It was equally impossible when HITLER

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was at the Berghof near Berchtesgaden for weeks at a time whilst KEITEL remained in Berlin.

c) At the beginning of operations, KEITEL was with JODL and the Supreme General Staff at the Fuehrer's headquarters . Here also they were separated. KEITEL did not sit in HITLER'S anteroom, but rather in other buildings or barracks. He came at the proper time with General JODL to the conference on the situation, in which, besides HITLER, some 15 or 20 officers of all three branches of the Wehrmacht took part. Apart from the conferences on the situation there was no physical contact. When HITLER wanted KEITEL for anything he sent for him.

Personally and physically there was closer contact in Berlin between HITLER and his adjutants, the chief of the Party Chancellery, the chief of the Presidential chancellery, and the Chief of the Reich Chancellery.

KEITEL not only could not decide who could see HITLER, he also could not possibly prevent anybody going to HITLER.

HITLER'S sources of information were the responsible heads of each department; it was occasionally not clear whence HITLER obtained his information.

I shall pass on to the next paragraph.

GISEVIUS did not know these conditions from his own experience; he himself was never near KEITEL, who never saw or spoke to him, and whose name he did not know. If he gave his opinion here, he could only base it on information given him by CANARIS, THOMAS, and OSTER.

General JODL has been heard regarding this question. He certainly is the best witness in this matter, since he, as well as KEITEL, lived in the immediate vicinity of HITLER and therefore could form his own judgment. He stated, concerning this matter:

"Unfortunately, it was impossible to keep things from HITLER. Many channels of information led to HITLER direct."

Upon my interrogation, at the suggestion of the Tribunal, JODL confirmed that what KEITEL had testified was quite correct, and that which witness GISEVIUS stated was, in general, merely a figure of speech.

The co-defendants, Grand Admirals RAEDER and DOENITZ, have confirmed that the allegations of the witness GISEVIUS that KEITEL was able to keep the high commanders of the branches of the Wehrmacht away from HITLER is false.

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If, however, this wasnot the case, it follows that the way from the branches of the Wehrmacht to the Fuehrer was open at any time.

Through the hearing of witnesses it was also established that apart from JODL, the Chief of the Supreme General Staff, and also in particular, CANARIS, had immediate access to HITLER.

Thus, the accusation of the witness GISEVIUS that KEITEL had formed a ring round HITLER is proved false.

The treatment of statements.

The witness GISEVIUS has declared that reports were submitted to KEITEL by CANARIS about atrocities in connection with deportations, extermination of Jews, concentration camps, the persecution of the church, and the killing of insane persons, which KEITEL withheld from HITLER.

The same is alleged about the reports of General THOMAS, Chief of the Defense Economy Office, the purpose of which was to inform HITLER about the war potential of the enemy and bring him to reason. Concerning admiral CANARIS'S reports, it must be said that as chief of espionage and counter-intelligence he naturally delivered regular reports which concerned the conduct of the war, including the conduct of economic warfare.

It is affirmed that reports were submitted on subjects which belonged neither to thejurisdiction of theCounter-Intelligence Office nor of the Army High Command (OKW). It has been proved that HITLER took strict care that every worker confined himself to his own special field, and it was particularly forbidden to military offices to concern themselves with political affairs.

KEITEL has declared under oath thathe knew nothing about the atrocities and especially about the extermination of the Jews, and the concentration camps. This is in absolute contradiction to the assertion of the witness GISEVIUS that CANARIS submitted reports to the defendant KEITEL on the above-mentioned subjects. One can affirm that reports of any kind whatsoever

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were delivered to Keitel without having to fear being contradicted, especially when one does not have to fear that these reports will be found. For if they are not delivered, neither can they be found, because they do not exist. Now Gisevius has declared that he gathered documents from the beginning which contained incriminating material. Is it not remarkable, under these circumstances, that up to now, none of these reports have been produced. If they were on hand at the Army High Command (OKW) they were to that extent an object of the accusation and the evidence. Can it be sufficient under these circumstances if a witness declares he knows from third parties that such reports were submitted to Keitel?

Canaris, because of his particular situation, which sent him constantly to foreign countries on personal, secret errands for Hitler, had access to Hitler at all times. He would thus have had an opportunity to go to Hitler immediately if he had had serious misgivings of conscience, as Gisevius has declared he did. Why did he not do so?

Now Gisevius who in general has pronounced global and damning accusations, has luckily for Keitel, at one point of his deposition made a positive declaration that permits of objective verification:

".....I believe that I have still two examples to mention, which to me are particularly characteristic: first, the attempt was made by all possible means to induce Field Marshal Keitel to warn Hitler against the invasion of Holland and Belgium, that is, to inform Hitler that the information submitted by Keitel about alleged violations of neutrality by the Dutch and Belgians was false. The Counter Intelligence Office (Abwehr) was to prepare reports incriminating the Dutch and Belgians. Admiral Canaris at that time refused to sign these reports. I request that this be verified. He told Keitel repeatedly that this report which was ostensibly made by the Army High Command (OKW) was false. This is an instance where Mr. Keitel did not transmit to Hitler what he was supposed to have transmitted....."

I have submitted to Colonel General Jodl, here, on the witness stand Document PS 790 which refers to the case of the White Book about violations of neutrality by Holland and Belgium. Jodl testified, word for word:

".....I understand the question and would like very briefly to state

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the fact, as it really was, so long as disgust does not choke me. I was present when Canaris came to the Field Marshal in the Reich Chancellery with these report notes and laid before him the project of the Foreign Office's White Book. Field Marshal Keitel then looked through this book, above all listening to the chief remarks which Canaris made at the request of the Foreign Office, namely, that the reports were perhaps stillsusceptible of some improvement, that he should confirm the fact that a military operation against Holland and Belgium was absolutely necessary, and that asit is expressed here, a final really striking violation of neutrality was still lacking. Before Canaris had said a word, Field Marshal Keitel threw the book on the table and said; I refuse to do this, how does it happen that I should take any responsibility for a political decision. In this White Book appear word for word, true and correct, the very same reports that you, yourself, Canaris, brought to me." To this Canaris said: "I am entirely of the same idea. It is, in my opinion too, entirely superfluous to have this document signed on the part of the Wehrmacht and the reports that we have here, are in their totality completely sufficient to prove the violations of neutrality which have taken place in Holland and Belgium." And he advised Field Marshal Keitel not to sign it at all. That is the way it happened. The Field Marshal then took the book with him and I do not know what happened subsequently....." Keitel did not sign the White Book. Therefore in the only verifiable case a clear proof is obtained of the inexactitude of Gisevius' testimony.

According to the statement of the witness Gisevius, Keitel exerted a tremendous influence on the Army High Command (OKW) and the Army. These words, without any presentation of concrete facts are only a phrase in the mouth of a man who had no contact whatsoever with Keitel. They are refuted by the statements of Goering, Doenitz and Raeder. Jodl has qualified this statement as merely a figure of speech. Insofar the witness speaks of his tremendous influence on the OKW, it must appear questionable what the witness really means.

Naturally, Keitel as a Chief of Staff had influence in the Army High Command, that the influence which resulted from his position which I have already discussed How he stood with his subordinates will be taken up later.

The important thing, however, is to know whether Keitel had a decisive and

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culpable influence on what happened. This influence, however, could only take effect on Hitler or the Branches of the German Armed Forces. That Keitel had no decisive influence on Hitler has even been confirmed by Gisevius and his being without decisive influence on the Branches of the Armed Forces, has been established by the results of the testimony.

Against the defendant Keitel was "that instead of placing himself in front of his subordinate officers to protect them, he threatened to hand them over to the Gestapo".

In contradiction to this, it has been established that no Chief of Office in the Army High Command was dismissed in the years up to 1944; furthermore, until 20 July1944, the day of the attempt on Hitler's life and the transfer of the judicial power in the home-army to Himmler, no officer of the Army High Command was turned over to the Police. Grand Admiral Doenitz has confirmed that the Branches of the Armed Forces and the Army High Command were very scrupulous in maintaining the privileges of the Armed Forces as opposed to the police.

The Court has also seen here, how General Jodl spoke about his relation to the defendant Keitel. I think this remark has a special importance, not only because Keitel lived on companionable and friendly terms with his official subordinate, General Jodl, during their long years of cooperation. As natural as that may appear, the less natural it is, if one reflects that Jodl in spite of his officially subordinate position, in reality became more and more Hitler's only strategic advisor. What this means, considering the preponderance of the operational tasks in the war, has been convincingly demonstrated here by General Jodl.

If Keitel took this without jealousy, freely acknowledging the superiority of his subaltern Jodl in this domain, this proves in Keitel a trait of character which refutes the information derived from obscure sources by the witness Gisevius.

The proven fact that Keitel lived on friendly and companiable terms with his subordinate Chief of Office, Canaris, also is incompatible with the contrary assertion of witness Gisevius.

In this connection it is necessary to refer to the fact not submitted by Keitel but testified to by Jodl without Keitel's consent, that the latter supporte

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and helped Canaris' family after his arrest. I only refer to this to refute the perhaps most serious personal reproach, according to which Keitel did not behave decently towards his subordinates and abused his superior position - which was especially powerful in military life - even to the point of threatening violence.

According to Gisevius' evidence, Admiral Canaris not only played a double role in the service, but also with respect to the defendant Keitel, while exploiting the friendship shown to him, he expressed a similar attitude, whereas in the midst of his own group he openly spoke in a spiteful way about Keitel.

Finally in this connection reference must still be made to the evidence of the witnesses v. Buttlar and Brandenfels (session of 8 May 1946, page 11119 of the German transcript), from which it is clear that Keitel always treated the officers of the German Armed Forces Operational Staff kindly.

The witness mentions a quarrel between himself, Lieutenant-Colonel v. Ziervogel on the one hand and Himmler on the other, in which Keitel, to whom the incident was reported, immediately and energetically intervened in writing to protect his subordinates against Himmler. The affidavit of the Chief of Office in Canaris' office, Admiral Buerkner, to which I refer also testifies in the same way to Keitel's kindly attitude towards his subordinates.

At any rate, it must be said in clarification that Keitel many times had occasion to speak energetically to his office and department chiefs.

I shall then continue by explaining that officers and officials did not generally concern themselves with politics, and that when the situation deteriorated, they made political information the subject of their argumentation. And in explanation I state that Keitel has, in fact, defined his attitude with words which were based on his assumption that the soldier in war would have to testify to his faith and obedience, and that if Keitel ever heard anything, he would reprimand these officers.

I now continue on Page 90 of my statement.

Keitel did this with "words". That does not mean that this was mere camouflage which did not correspond to his inner attitude; but it does mean, that the form, perhaps often rough and harsh, in which the defendant Keitel spoke to his officers did not - even in a single case - lead to an officer being

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punished or disciplined. Dr. Gisevius, however, perhaps wanted to say that Keitel had dealt with his subordinates in the Army High Command in a morally reprehensible way.

I now continue on Page 92 of my statement.

From an impartial estimation of the facts verified by the presentation of evidence it is shown that the accusations arising from the testimony of the witness Gisevius are not correct.

But the pictures would not be complete if the personality of the witness Gisevius would not be illuminated according to his own evidence. This judgement is made up from two factors:

1) The career and the position of the witness.

2) The trustworthiness of his information.

On Page 92 of my text, I state in detail which functions Dr. Gisevius has undertaken. In particular, I have not emphasized anything which, from my point of view, might accuse him in any way for having testified here to all the things which you have heard. I have only objectively ascertained the following:

a) He evaded the military service through falsified papers put at his disposal by Oster.

b) He lived in Germany during the whole time since 1933 without restriction of liberty and remained in office up to 20 July 1944.

c) He was an official of the German Reich and was in its pay from the middle 1937 to the beginning of 1939 with the exception of leave.

d) He was Vice-Consul of the Reich in Switzerland since 1943 in the Consulate General at Zurich placed through Canaris as intelligence agent and was naturally paid for it. At the same time he was in connection with the enemy's intelligence service.

e) He had since 1933, when he worked in the Gestapo, the exact knowledge of all horrible happenings and the perception what consequences could arise from it for the German people.

f) A special circumstance, which shows the witness Dr. Gisevius in his true light, is the advice, or the suggestion, which he gave to the experienced bank specialist, Dr. Schacht -- and that is on Page 8280 of the record -- that he should thus allow the inflation and get the controls of affairs into his own hand

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This suggestion leaves only two possibilities: A complete ignorance of the national economical importance and social effect of an inflation or a boundless unscrupulousness which completely disregards the fate of the employees and workmen. An inflation brought about knowingly can be described only as a crime against the people. Schacht described it as a catastrophe. He said, "You want the catastrophe; I want to avoid it".

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To 2.)

In order to judge the reliability of the statements by the witness GISEVIUS before this Tribunal, I must refer to the book submitted by the witness as evidence : "To the bitter end". This book is also a "statement" of the witness GISEVIUS.

To err is human, but when in the year 1945 - after the collapse of Germany - a book appears in which facts and occurences are communicated of historical and for those personally involved of moral and even criminal importance, the incorrectness of which has become obvious in the meantime, then the mistake is unforgiveable and there is no longer an excuse for refering to false informations.

I will refer only slightly to the many inaccuracies contained in this book which were established before this tribunal through the cross examination by Dr. KUBUSCHOK (Page 8413 of the German transcript 26 April 1946). There are 4 incorrectness which refer to the defendant Von Papen and I beg you to take official cognizance of it.

I now continue to page 94.

One would not define it as an unfounded reproach if such a statement is described dubious and the author not reliable.

It is difficult for me as a German defense counsel to deal calmly with this problem. The statement of Gisevius contains the entire tragedy of the German people, it is for me a proof of the weakness and of the decadence of the German circles who played with the idea of revolt and high treason, without apprehending intimately the distress of the people. They were a top level of the future ministers and generals without support from the large masses of our people, working classes, as Reich Minister Severing has declared here with all clearness.

Mr. Justice Jackson has used the word "resistance movement" in connection with the examination of the witness Gisevius. We have often heard during the progress of this trial about unfrightened, brave men and women, who fought for their country, have suffered and died. They were our enemies. But nobody would deny the acknowledgment of their heroism, who tried to judge these things objectively. But where will you find this heroism in the group around Gisevius ?

If one reads his book "To the bitter end" and one has heard him here, one looks in vain for a self-sacrificing man. Even the late deed of a Stauffenberg

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lacks heroism, as it lacked the decision of the self-sacrifice. Gisevius speaks in the time up to 1938 - as if there was time - to hold back the wheel of the fate successfully, always about negotiations, conferences, but all these men wish that the others - that is the generals - should negotiate. If one considers the knowledge of affairs, which Gisevius had as member of the Gestapo and all his friends, if one takes into account the perception of the great danger in which the people were suspended, then the decision for action should not be doubtful for an instant for the patriotic men, as the members of the group claimed themselves to be. But what did they do ? As the leaders of the army hesitated or refused, they did not think about their own action, but turned to the foreign countries.

I shall pass on to page 96.

I should not like to leave any doubt that the fact of the conspiracy in itself is of no importance in the question of trustworthiness to be discussed here. Wherever is a conspirator out of pure motives, who, in the realization of the danger which threatens his country, risks his life, is not only clean, but also desirves the gratitude of the fatherland.

If Gisevius and his friends, who, in their positions were informed about everything which, in its entire frightfulness, most Germans have only learned through this trial, had served their country in unselfish sacrifice, than perhaps we and the world would have been spared much distress and suffering.

Grand Admiral Doenits, who knew Admiral Canaris well, said : "During the time that he was in the Navy, Admiral Canaris wan an officer in whom little trust was placed. He was an altogether different person from us. We said that he had seven souls in his breast." But, gentlemen, what does Dr. Gisevius say on page 319 of the book "To the bitter end" ? "The successor was Canaris, at that time captain in the Navy, quite clever and more cunning than Himmler and Heydrich together."

On the subsequent pages I have analysed those personalities who have been quoted by Gisevius as being the chief sources of information. I do not wish to come to this in any detail. We are here concerned with the persons of Canaris, Nebe, and Thomas.

As regard pages 96 to 102, I shall make the following brief summary. In reference to Canaris, I only want to say that he was living in the closest touch with Himmler, Heydrich and the Gestapo although he was their sworn enemy

as he admitted. Thomas, who had been a member of the Gestapo, was an excellent General Staff officer, and he was an untiring worker in the Army Command Staff under Keitel. Reference is also made to that in document 2353-PS. That man was the spirit and the driving power of rearmament which he, Keitel, and others considered necessary to the extent which he energetically pursued. But it is the same man who worked on the Barbarossa Plan and who later, under the Four Year Plan became the head of the economic Staff of the Plan Oldenburg. The results of that plan need not be explained here by me. General Thomas who, according to his very convincing exterior appearances used all his powers for the economic situation of the war, and who after leaving Speer was by no means dismissed but was given the task of writing the book which is the main evidence of the Prosecution. PS-2353.

If it is true that what Gisevius has said about Thomas that he, in 1933, had played a double game, then he was an opportunist and not a man who can be expected to give objective information. I draw your attention to page 103 where witness Gisevius has described Nebe as one of his most intimate friends, and according to the statements by Dr. Gisevius, Nebe had been his friend since 1933 and was thoroughly familiar with the trend of thought of the witness. He remained in RSHA - discussed numerous times here - until 20 July 1944, and in the year 1944 he had power to issue orders to headquarters of the Special Service Office (Sonderdienst) in charge of prevention of escape of prisoners of war. This is shown by enclosure to document USSR 413, submitted by the prosecution, testimony of the witness Wiellen also heard here.

To characterize this witness - from whom Dr. Gisevius after leaving the Gestapo claims to have received information currently - it should be pointed out that from 1933 to July, 1944, Nebe served in the RSHA, evidently to the satisfaction of his superiors Himmler, Heydrich and Kaltenbrunner; otherwise he would not have stayed in office that long and would not have been promoted to the rank of Police General and SS Gruppenfuehrer (SS Major General). While thus, on the one hand

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he fulfilled the tasks incumbent upon him by reason of his position, for 11 years, with the well known methods of the Gestapo and later the Kripo which were under HIMMLER, Dr. GISEVIUS refers to him as his friend and political associate. Now, it might be assumed, perhaps, that in the position he held he was able to prevent disaster, possibly even to hold up execution of orders. Document USSR 413, just referred to, shows that this is not what NEBE did; rather did he work as a loyal HIMMLER police general. In the deposition by WIELEN -forming part of the document- the horrible case of the 50 escaped RAF fliers in which case General NEBE and Dr. GISEVIUS were involved is dealt with.

I quote from Wielen's testimony: "One day during that time I received an order around noontime, by telegraph, from General NEBE to proceed to Berlin immediately, to become acquainted with a confidential order. Arriving in Berlin on the evening of that day, I reported to General NEBE at his office, Wendischer Markt 5 to 7. I gave him a condensed report on the status of the matter at that time. He then showed me a teletype order, signed by KALTENBRUNNER, to the effect that, in conformity with the Fuehrer's explicit and personal order, more than half of the officers who escaped from Sagan were to be shot when recaptured. The following paragraph and any commentary appears superfluous. I said this violates martial law and undoubtedly was bound to result in reprisal measures against those of our own officers who were in English camps, as prisoners of war, and that I simply refuse to take any responsibility. General NEBE declared that in this instance I was not at all responsible since the state police was to act entirely on its own and that, after all, orders given by the Fuehrer had to be executed without protest. NEBE added furthermore that, naturally, it was my duty to keep the matter in deepest secrecy and that the reason for his showing me the original order was so that I would make no trouble for the state police."

Any comment seems superfluous. This is significant for NEBE's personality. The trustworthiness of a person is an inseparable part of his entire personality. Information obtained from a person who, for more than a decade was able to play such an abominable double role can have no claim to faith.

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I believe that this analysis of the statements of the witness Dr. GISEVIUS and of the men belonging to the GISEVIUS group gives me the right to say that the charges made against the defendant KEITEL by the witness can be no suitable foundation for the argument of the prosecution, that the defendant Keitel:

1. formed a circle around HITLER
2. his influence on the OKW and the armed forces was tremendous
3. he did not submit reports on atrocities and crimes to HITLER
4. That he did not protect his subordinates, even thereatened them with the Gestapo.

On the other hand it is true that the effective position of Keitel however important it may have seemed to outsiders, was neither decisive nor of determinatin importance, whether for the total sum of event or also for the basic and important decisions of HITLER. Justice can be done to the actual importance of this activity if one says that it was tremendous, because physically and spiritually it went beyond human strength; because it placed the defendant permanently in a delemma between his military point of viewand the unbending will of HITLER, to whom he was faithfully, far too faithfully devoted. Physically because it was nearly insoluble, becaus it had no sharply defined, clear outlines, but consisted in the eternal equalizing of factual differences, the adjustment of personal sensitiveness, the "self-protection" against encroachments of the individual offices among themselves or against the OKW; in clever manoeuvring when HITLER, in explosive reaction to disagreeable news, wished to issue extravagant orders, in the settlement of all disagreeable matters which HITLER did not wish to attend to himself. It was a tremendoudly thankless task, which found only very slight compensation in the brilliant situation in the immediate proximity to the head of the State, in the decorative participation in all events of what is called world history, in the representative duties of a Field Marshal.

Was Keitel a political General ?

The defendant Keitel is accused of having taken part in, helping and promoting the planning, preparing of and inciting to aggressive wars with

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violations of international treaties and engagements. The defendant stated in the witness box in this connection. Insofar as knowledge or having cognizance of the intention to attack is concerned, I shall come back to the subject in connection with other things. The facts as such are set forth by the defendant Keitel.

Insofar as the initiating and carrying out of strategic measures are concerned, the defence counsel for General Jodl will deal with these questions.

I would like to mention a single event which gained historical and for the defendant Keitel a personal importance during this trial : the conversation between Hitler and von Schuschnigg on the Ober-Salzberg on February 12th 1938. This was the sheet-lightning that could have revealed the coming of the storm to clear sighted peoples. Keitel chief of the German High Command for only a week, so far without any contact with high political events, did not perceive these signs of approaching stormy weather. Hitler who after the sudden change of 4 Feb. 38 had immediately gone to the Obersalzberg, called Keitel for the first time, without giving any explanation. Keitel came, without knowing what Hitler wanted or what was to happen in Obersalzb Only the course of the day did he realize that his presence could have any connection with the presence of Schuschnigg and the discussion of the Austrian question proved in any of the conversations, especially with Schuschnigg or Dr. Schmidt, he however realized that his presence, together with th of Generals von Reichenau and Sperrle should have a significance for the conversations with Schuschnigg; for, since, Hitler did not speak to him at all about military matters, he was forced to the conclusion that the representatives of the Supreme Command of the Wehrmacht, the Army and the Air Force had been invited to demonstrate the power of the Wehrmacht in Schusschnigg's eyes,

The situation was therefore such that Hitler had the intention of usi the representatives of the Wehrmacht as a means of pressure for the realization of his political plans, that they had no knowledge of this beforehand, and that they realized this intention only later on.

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This meeting at the Obersalzberg is now being used by the prosecution as a basis for the accusation that Keitel was a political general. The prosecution introduced the conversations between Hitler and Hacha and Tiso, at which the defendant Keitel also was present, as a further symptomatic event. This evidence does not appear convincing, if it is intended to prove that Keitel was also an active party in the political conversations.

When the defendant Keitel took part in State visits and conversations with foreign statesmen, he did not participate in the conversations, but he was present.

Hitler liked to have Keitel in his entourage as representative of the Wehrmacht. Thus Keitel was also present at Godesberg when Prime Minister Chamberlain went there, also at Munich on September 30th 1938, and at the visit of Molotov in November 1940. He was also present at the meetings of Hitler with Marshall Petain, with General Franco, King Boris, with Regent con Horthy and with Mussolini.

This function of Keitel is however insufficient to make the defendant into a General who would have taken a determinative part in the political evolution. How little this assertion is justified is seen from the fact testified to by admiral Buercknor, that Keitel was extremely careful not to intrude himself into the affairs of the Foreign Office and gave his officers the order not to engage in matters of foreign policy.

In internal politics the exclusion of the chief of the OKW resulted from the removal of the Reich Minister for War, already dealt with, and the elimination thereby aimed at and achieved of the political represention of the Wehrmacht in the Cabinet.

It is self-evident, and has already been pointed out, that the position of the defendant Keitel as Chief of the OKW implied and in time of war must have implied to an increased extent his coming into some kind of contract of with all the Ministries and highest Offices, and his dealing with them as the representative of the OKW, that is to say of HITLER.

That did not make Keitel a politician, i.e., a man who took part in an advisory capacity in the determination of Governmental aims and had an influence on the same.

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In his high office he naturally worked to carry out these aims and thus far bears a responsibility, but not as a political General.

Mr. President, maybe I am wrong, but I am now beginning a large chapter. Do you want me to start with it ?

THE PRESIDENT: Go on reading then until five o'clock.

DR. NELTE:

The idea of war against Russia was rejected by Keitel. This found visible expression in the memorandum which Field Marshall Keitel drew up, discussed with von Ribbentrop, and handed over to Hitler. According to his sworn statements the reasons were as follows:

a) military considerations.

b) the non-aggression pact with the Soviet Union, dated 23 August 1939.

In spite of personal presentation the memorandum had no success. Hitler as usual in questions of strategic nature, rejected Keitel's point of view as unconvincing.

In this connection and due to Hitler's strict refusal, Keitel asked for release and transfer to the front. This is the case which Reich Marshal Goering confirmed in his interrogation. Hitler refused, sharply critisizing the habit of Generals asking to be released or tendering their resignation whenever he (Hitler) did not approve their opinions or suggestions. That settled it for Keitel : he remained in his post, did his duty, and fulfilled his obligations in carrying out the tasks falling to him within the frame work of further preparations. Here, too, in keeping with his conception of duty, Keitel did not make known to the outside world his basically negative attitude towards the war with Russia, after Hitler had made his decision.

This case is in several respects typical of Keitel and his judgment by others. We know -and it has been proved by the evidence- that other Generals were also opposed to war with the Soviet Union. Their objections, too, were dispersed or rejected by Hitler. They, too, accepted the decision of the Supreme Commander of the Wehrmacht, continued to do their duty and carried out the orders given to them.

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But there was one basic difference; these other Generals went back to their Headquarters after the discussion. There, in their own circle of officers they spoke about the decision made by Hitler. Of course, it was disputed, but they acted in accordance with it.

Since Field Marshal Keitel, due to his military conception as already depicted did not make public to the generals, when they appeared in the Fuehrer Headquarters for discussions, his own attitude, although it too was at variance, the impression was bound to be created that Field Marshal Keitel completely agreed with Hitler and did not support the scruples of Wehrmacht branches..

Thus the opinion was created in the course of time and disseminated through the entire army that Field Marshal Keitel was a "Yes man", a tool of Hitler, that he was betraying the interests of the Wehrmacht. These generals did not see and were not interested in the fact that this man maintained a constant battle day after day over all possible problems with Hitler and the forces which influenced him from all sides.

This picture which definitely did not apply to Keitel, especially not in the sphere of strategic operations -planning and execution-, as has been stated here in detail became a distorted picture which has maintained its effect up to and in these trials. May be not without the fault of the defendant Keitel. About the justification of his conception of duty there can basically be no argument, it has been confirmed here by the witness Admiral Schulte-Moenting to be ture for the defendant Grand Admiral Raeder, too. There can be no doubt that the other Admirals and Generals took basically the same point of view, that it is impossible in the military sphere to criticize before subordinates the decision of a superior as expressed in an order, even if one has scruples against the order oneself.

One may say that every principle, every basic rule, must be interpreted and used in a reasonable way, that every exaggeration of a good principle means its devaluation. In the case of Keitel this objection touches the problem of his responsibility and guilt altogether.

THE PRESIDENT: Dr. Nelte, I think you might stop there.

(The Tribunal adjourned until 9 July 1946, at 1000 hours.)